Graham Grocery Co:

July	30.	Freight on water barrels	.52	
Aug.	6.	" " groceries to Scott's Ldg.	.78	
Aug.	18.	4 sks. Flour 7.20, 1 pc. D. S. Meat 5.85	13.05	
		1 cs. Tomatoes 2.90, 10# Print Cheese 3.00	5.90	
		1 cs. 10¢ Macaroni 1.90, 1 cs. Hominy 2.50	4.40	
		1 Bx. Crackers 3.96, 1 gal. pickles 3.65	7.91	
		1 Sk. Meal 1.10, 25# suger 5.00	6.10	
		1 Cs. Sm. Pet Milk 5.30, 6 Bot. Catsup .73	6.03	
	19.	Freight pd. on shipment 8/19, Corona, Tenn	1.29	
	18.	1 doz. Lenox Soap .60	.60	
	26.	2 Bacon Bellies 11.10, ½ doz. raisins 1.38	12.48	
		Freight	.52	
			59.28	
		Less over-payment of $1.00 in 1919	1.00	
			58.28	
Oct.	5.	Paid by Voucher #77		58.28
		Forward		$4,404.30

		Amount forwarded		$4,404.30
1920.		Miss Elba Arnold, stenographer:		
Oct.	7.	Writing 278 pages with copies at .40	$111.20	
		" 2 vouchers (double) with copies	.50	
		Writing 1 letter with copy	.25	
			111.95	
Oct.	7.	Paid by Voucher #80		111.95

John Wilkes, Transitman:

Sept. 21.	Time, Sept. 1 to 21, incl. 21/31 month @ $200	140.00	
	5. Gasoline for motor boat 2, Clark for expns. 50	2.50	
	6. Frt. on camp outfit, Pleasant View to Memphis	9.30	
	6. Lunch .50, boat fare Pleasant View to Mfs. .55	1.05	
	Helpers 2 days' work 6.00, supper .75	6.75	
	7. Breakfast, lunch, supper	2.20	
	8. Meals 1.65, hauling camp outfit for storage $5	6.65	
	9. Hotel 7th, 8th, 9th, 8.05, taxicab .50, meals 1.40	9.95	
	Railroad fare Memphis to Wynne, Ark.	2.05	
	10. Meals 2.25, express on instruments .45, telph. 50	3.20	
	11. Meals	2.30	
		185.95	
Oct.	2. Paid by Vouchers #78		185.95

John Wilkes, Transitman:

Sept.	12. Meals 1.95, hotel Wynne 3.75 hotel Mfs. 1.50	7.20	
	R. R. fare self & helper, Wynne to Memphis	4.05	
	13. Check instrument .10, axe-handle .50 breakfast .35	.95	
	Porter .25, boat 1.50, R. R. fare 1.40, supper .60	3.75	
	Hotel	1.25	
	15. R. R. fare Frenchman's Bayou 1.40, meals 1.10	2.50	
	16. Motor boat	6.00	
	18. Boat to Memphis 2.20, porter & car fare .40	2.60	
	Supper .70, helper 1.00, exp. on instruments .35	2.05	
	19. Meals	1.90	
		32.25	
	Forward		$4,702.20

43	Amount forwarded			$4,702.20
1920.	John Wilkes, continued, amt. for'd		$32.25	
Sept. 20.	Meals		2.00	
21.	Hotel & meals 5.45, R. R. fare Wynne to Nashville 11.65		17.10	
			51.35	
	By $30.00 from Van Deventer		30.00	
			21.35	
Oct. 2.	Paid by Vouchers #79			21.35
	C. A. Stockley:			
Dec. 1.	Witness fee, one day's attendance		1.50	
	Mileage		2.50	
			4.00	
Dec. 2.	Paid by Voucher #81			4.00
	J. P. Walt (Altheimer, Ark.):			
Dec. 1.	Witness fee, one day's attendance		1.50	
	Mileage		14.70	
			16.20	
Dec. 2.	Paid by Voucher #82			16.20
	L. E. Patton, Memphis, Tenn.:			
Dec. 1.	Witness fee, one day's attendance		1.50	
2.	Paid by Voucher #83			1.50
	A. C. Edmonds, Lucy, Tenn.:			
Dec. 1.	Witness fee, one day's attendance		1.50	
	Mileage		1.50	
			3.00	
Dec. 2.	Paid by Voucher #84			3.00
	W. P. Davis, Memphis, Tenn.:			
Dec. 1.	Witness fee, 1 day's attendance		1.50	
Dec. 2.	Paid by Voucher #85			1.50
	Forward			$4,749.75
44	Amount forwarded			$4,749.75
1920.	F. W. Davis, Memphis:			
Dec. 1.	Witness fee, one day's attendance		$1.50	
2.	Paid by Voucher #86			1.50

	Nat Sanders, Corona, Tenn.:		
Dec.	1. Witness fee, one day's attendance..	1.50	
	Mileage	2.70	
		4.20	
Dec.	2. Paid by Voucher #87.....		4.20
	W. P. Hall, Memphis, Tenn.:		
Dec.	1. Witness fee, one day's attendance..	1.50	
	2. Paid by Voucher #88.....		1.50
	W. A. Cissna, Dean's Island:		
Dec.	1. Witness fee, one day's attendance..	1.50	
	Mileage	3.50	
		5.00	
Dec.	2. Paid by Voucher #89.....		5.00
	W. H. Newsom, Transitman:		
Sept.	27-28-29. Round trip from Corona to Wynne	5.56	
	Motor boat hire.....	15.00	
	Board for self.....	4.50	
Oct.	18-18-19-20-21. Round trip, self & one helper Wynne to Corona.....	11.45	
	Board for self & helper.....	12.50	
	Motor boat hire.....	6.00	
	One helper four days at $3.50.....	14.00	
	Services self 7 days at $10.00 per day	70.00	
		139.00	
Dec.	7. Paid by Voucher #90.....		139.00
	Forward		$4,900.95
45	Amount forwarded.....		$4,900.95
1920.	R. E. Newsom, Rodman:		
Sept.	Services as rodman five days at $3.50	$17.50	
	Round trip Wynne to Corona.....	5.50	
	Board	1.50	
		24.50	
Dec.	7. Paid by Voucher #91.....		24.50
	Leslie James, Rodman:		
Oct.	Services as Rodman, Oct. 18th to Oct. 21st, inclusive, 4 days at $3 per day.....	12.00	
Dec.	7. Paid by Voucher #92.....		12.00

Miss Elba Arnold, stenographer:

1921.	To copying 200 pages, with carbons of record	80.00	
	Taking testimony (12/1/20)	6.00	
		86.00	
Jan. 24.	Paid by Voucher #93		86.00
	Forwarded		$5,023.45

46	Forwarded		$5,023.45
1920.	Chas. A. Barton, Secretary:		
July 15.	Advertising for Motor Boat	$1.70	
Aug. 7.	R. R. Fare Memphis to Frenchman's Bayou	1.14	
" 7.	Telegram from War Department	.97	
" 9.	5 Gals. Gasoline @ 35¢	1.75	
" 10.	Mr. Scott's hostler for buggy	.25	
" 11.	Pair hinges 35¢, tea 75¢, 1 yd. Cheese cloth 15¢	1.25	
" 12.	Mr. Scott's hostler for buggy	.25	
" 13.	Eggs $1.00, butter-milk 15¢	1.15	
" 14.	Wagon from camp to Frenchman's Bayou 75¢, hasp 25¢	1.00	
" 14.	R. R. fare Frenchman's Bayou to Memphis	1.14	
" 16.	Steamboat fare Memphis to Corona .55, lunches 1.25	1.80	
" 17.	Buttermilk	.30	
" 19.	Boat fare self & Van Deventer, Corona to Corbett's	1.10	
" 19.	Hauling groceries, Corona to Island 37	2.50	
" 20.	Team 2.00, motor boat 1.50, vegetables .75	4.25	
" 20.	Tomatoes	.40	
" 21.	Man and skiff on Old River 2 days $6.00 Vegetables 1.40	7.40	
" 21.	Conveyance self & Bailey, camp to Corona	3.00	
" 21.	Boat fare Corona to Memphis	1.10	
" 21.	Lunch .30, Street car .07	.37	
" 26.	Steamboat Memphis to Pleasant View	.55	
" 26.	Car fare .07 ½ tea .50, baking powder .60	1.17	
" 26.	Gasoline .40 Can .50	.90	
" 27.	Hauling freight	1.00	

Aug.	28. Boat fare Pleasant View to Memphis	1.10	
"	30. Telephone	.10	
Sept.	3. Boat fare Memphis to Pleasant View .55 car fare .07	.62	
"	3. Lunch on boat 50¢, ferry 25¢, storing boat 1.50	2.25	
"	4. Conveyance, camp to landing $1 car fare .07	1.07	
"	4. Boat fare Pleasant View to Memphis 1.10 Coffee $2	3.10	
"	4. Sugar 2.80, beans 2.10, pepper 5¢	4.95	
"	4. Team and driver for party	2.50	
"	1. Stamped envelopes	.58	
	Forwarded		$52.71
47	Forwarded		$5,023.45
	Amount forwarded	$52.71	
1920.	Chas. A. Barton, Secretary:		
Sept.	6. Boat fare for Payne, Jayne, & Vaught, Camp to Mfs	1.65	
"	6. R. R. fare, same party Memphis to Wynne	6.09	
"	6. Lunch, same party	1.08	
Oct.	4. R. R. fare Memphis to Wynne & return	4.06	
"	4. Car fare .14 Lunch .35	.49	
"	19. Maps from Miss. River Commission & postage	.65	
1921.			
Feb.	25. Maps from Miss. River Commission & postage	.80	
Mar.	22. R. R. fare Memphis to Covington & return $3.38 Meals 1.25	4.53	
Apr.	19. Postage on record to Nat Tipton, Covington	.90	
May	4. Postage	.26	
"	18. Ten Blue Prints $3.75 Binding Record $3.00	6.75	
"	19. Express on record	1.65	
	Bill of groceries C. A. Stockley Dec. Dec. 16, 1919	24.25	
		105.87	
	By cash from C. A. Stockley 12/16/19 pt. camp outfit	90.00	
		$15.87	
	Paid May 18, 1921 by Voucher No. 96		$15.87
	Forwarded		**$5,039.32**

48	Forwarded		$5,039.32
1921.	Elba Arnold, stenographer:		
March 3.	Taking testimony	$2.00	
March 24.	" "	6.00	
April 15.	" "	6.00	
	Transcribing 410 pages, original & carbon copy	164.00	
	Copying 30 pages, tabulated vouchers, 4 copies	18.00	
		$196.00	
	Paid by Voucher #97, dated May 18, 1921		$196.00
			$5,235.32

The time given to this work by the several Commissioners is as follows:

C. B. Bailey	105 days.
Chas. A. Barton	112 days.
Horace Van Deventer	111 days.

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1 EXHIBIT "C."

Statement by Chas. A. Barton (One of the Commissioners).

About a year ago I had an interview with Capt. W. W. Maingault, an old steamboat master, who was thoroughly familiar with this part of the river. He told me that boats in leaving St. Thomas, below the mouth of McKenzie Chute, ran a straight course to Charley Morris' light house, which was located at his wood-yard, and which is now Pacific plantation; below the light house they hugged the Arkansas shore. Capt. Maingault has died since, before we had an opportunity to take his testimony.

2 The first witness, F. W. DAVIS, being duly sworn, testified as follows:

Examination.

By Mr. Van Deventer:

Q. State your name, age and residence, also occupation.

A. F. W. Davis, age 65, residence 265 McLemore, Memphis, Tenn.; occupation, magistrate.

Q. Will you please state your steamboating experience on the Mississippi River?

A. Well, I am an engineer by trade. I steamboated up and down for years, began on the river when I was fifteen; I steamboated from New Orleans to Memphis, from Memphis to New Orleans; from here to Osceola; I steamboated around for about 16 or 18 years and then quit the river.

Q. You ran from here to Osceola?

A. Part of the time; first one place and then another. I steamboated from Louisville to New Orleans, Cincinnati to here, from here to New Orleans; all around in here I was acquainted with.

Q. You mean what is now Centennial cut-off?

A. Yes. I was executor for the estate of Dave Barrow and settled up that estate; I used to go up in there to the Barrow estate; it was at Viola; I settled up that estate.

Q. The Dave Barrow estate?

A. Yes, I was executor for that estate.

3 Q. From your experience in the position you occupied in steamboating could you give the main navigable channel of the river from Pecan Point down to the foot of Brandywine?

A. I know more about this in here because I stayed around there a great deal—used to be at Sexton, Cottonwood Point and St. Thomas; when I was a boy steamboating the main channel was around on the west side of Island 37.

Q. That is between 37 and the Arkansas shore?

A. Yes. Later on—I was on the Commonwealth about three years—we would come down in between Island 37 and I was the second or third boat that come through when Centennial cut-off was made, that was in 1876; I was on the Commonwealth. We had got word there was something wrong; in coming through there I notices a great many trees turned up-side down. In going up in them days we used to go around by Cottonwood Point and run up in there and come out and go west by Dean's Island. I often went through the chute going up; we would go through this chute going up, but in going down we always come around.

Q. That is called McGavoc Chute?

A. I think that is the proper name—McGavoc Chute. There was a towhead right in here that we went around, on the north of the towhead at the head of 37.

Q. When was that?

A. In 1876. Mrs. Smith had a place over on this towhead occupied by a man by the name of Davis, her son-in-law; he married a Miss Smith.

A. They used to go on the north of the towhead?

4 A. We used to run around this way coming down; in going up you could go between the towhead and the head of 37. That towhead got to be quite an island.

Q. How far is that towhead from Shawnee Landing?

A. Shawnee Landing was south and west. Mrs. Smith's son and I were friends and I used to go over there and stay at their house a great deal.

Q. Will you please examine this Suter's map or blue print or reproduction of what is known as Suter's map of 1874, with reference to the dotted line, indicating the channel of the river, and state whether or not, according to your recollection that dotted line gives, approximately, the thread of the main channel of the river at that time? The date of this map is supposed to be 1874.

A. I was around in there in 1874, before the cut-off. This is the way we used to come down, follow the dotted line and come down over here; we come down this way. Often they would have freight and we would go into St. Thomas'; we often landed at St. Thomas'; St. Thomas' is half way between Cottonwood Point and Viola. That was Thomas Sexton's landing; Cottonwood Point was Jack Sexton's landing. Dresback is George Morris' old place. Chas. Morris' place was down where Golightly is.

Q. Will you go on, follow the line with special reference to crossings and tell us where boats began to cross after they swung around the bend. Did you follow that line down through the chutes?

5 A. Yes, followed this line through the chute; we would come in here in crossing; at the head of 37 we would cross and go down close to 37, that is when we were heavily loaded, go close to 37. Then we would come down over this way and on down and around Devil's Elbow.

Q. Did you follow that line close in to the Tennessee shore after you passed 37?

A. We come over and hugged close to the Arkansas shore.

Q. I mean after you were past 37.

A. Yes, we bore over that way and when we got toward Viola Landing we swung over and hugged the Arkansas shore.

Q. You began to hug in after passing Cottonwood Point?

A. Yes—I don't know—I believe we began to swing in a little higher up; we left about here and began to cross toward Cottonwood Point and right along here we hugged the Arkansas shore.

Q. Did the boats begin to cross toward Point Able from Viola Landing, following more the center of the river?

A. We followed along down toward Plum Island, kept closer to the Arkansas shore than we did to this.

Q. You followed closer to Plum Island, the Arkansas shore, after you passed Viola Landing, than is indicated by this dotted line?

A. Yes. There was a bar come out along here. Plum Island was the main land; back in there was low places, didn't amount to anything; people were living on Plum Island.

6 Q. Now, that is what we want to find out—the variations from this dotted line of the thread of the main navigable channel below Viola Landing; you stated, I believe, that the navigable channel was more toward Plum Island than this dotted line indicates?

A. Yes.

Q. Now, the variation from the dotted line, as you recall it, is opposite Cottonwood Point?

A. Yes.

Q. The channel was more northerly than indicated by the dotted line?

A. Yes.

Q. That is around Island 37 toward Cottonwood Point?

A. Yes, and turned directly west almost; when we got to Plum Island, heavily loaded, coming down, we hugged pretty well in to the island.

Q. When did you begin to cross toward Point Able?

A. We came in along down here, and we hugged the Arkansas chute going into Fogleman's chute. Point Able is a part of the Barrow estate that I settled up.

Q. That is in Tennessee?

A. Yes, I paid the taxes in Covington, Tipton County, Tenn.

Q. Where the channel runs around Devil's Elbow and when it begins to bear in for Fogleman's chute, does that dotted line on this map approximately show the channel from around Devil's Elbow and Brandywine bar?

7 A. This is the way we went. Fogleman's Chute was there before the cut-off.

Q. But it was not used as a channel?

A. Yes, we used to go into Fogleman's Chute. I never went on this side of Brandywine to amount to anything. We went up the chute.

Q. What years was that?

A. 1875, 1876.

Q. You used Fogleman's Chute in those days?
A. Yes.
Q. Do you know what they did before 1876 and 1875?
A. I don't know. I was a boy and didn't pay much attention. We used to go up and down Fogleman's Chute; this channel here, around this way, I never went down that way to amount to anything; have been around in packet boats. The snag boats used to work around in here. There was a landing on this side of Brandywine.
Q. There is an island in here, isn't there?
A. I have no recollection of that island, never paid no attention to it; I know there were towheads around there.
Q. Right opposite the mouth of the chute of 37, near Cottonwood Point, at the present time, there is a fill of land that had been made in recent years. Do you know whether the fill in there was made before or after the cut-off, on the Arkansas shore right opposite the mouth of this chute; was it made before or after the cut-off?
A. It was made after the cut-off. We used to cross the river here from Cottonwood Point to go on the Island hunting; that was
8 all filled up with willows on the Island 37 side.
Q. The fill I refer to was between the old channel, navigable in high water, and the levee.
A. That was all made since the cut-off, this in front of Carolina Guffman, that was made all out here. That was formed long after the cut-off. I sold this place here to a party, 300 and some odd acres, and he has since told me that he has about 800 or 900 acres there; and at Point Able over there, there is a negro that bought from Barrow before he died and the notes were turned over to me for collection, and this negro has got 1,000 acres of made land around Point Able.

And further deponent saith not.

9 The next witness, W. P. Davis, being first duly sworn, deposed as follows:

Examination.

By Mr. Van Deventer:

Q. State your name and residence.
A. W. P. Davis, Memphis, Tenn.
Q. What is your age?
A. Seventy-three.
Q. Will you please state to the Commission if you ever ran as captain or pilot on the Mississippi River, and if so, when?
A. I commenced in 1878 as pilot and captain.
Q. You didn't begin running the river as pilot or captain until after the cut-off?
A. No; I was steamboating, had been up and down the river and knew how it went.

Q. In what capacity did you work on the steamboats running the river from Pecan Point to the foot of Brandywine before the cut-off?

A. I was running from St. Louis.

Q. To what points below?

A. To Memphis and sometimes New Orleans.

Q. You are familiar with the way boats run the river before the cut-off?

A. Yes.

Q. Going up stream the boats cut the corners, did they not?

10 A. Yes sir.

Q. And going down they took the main navigable stream?

A. They took it when they could get the current to help them through.

Q. Will you tell us how they ran the river, according to your best recollection, from Pecan Point to the foot of Brandywine?

A. You mean before the cut-off?

Q. Before the cut-off.

A. Going up they went around close to the Arkansas shore, went up to the west side of Island 37. Coming down they generally come down this side and come between what was afterwards Centennial Island.

Q. This is the Chute of 37 coming down here or Mckenzie Chute?

A. Yes sir.

Q. Please examine the map, which is a blue print or reproduction of Suter's map, made by Col. Suter in 1874, before the cut-off—the dotted line indicates the channel of the river—and state whether or not that is approximately correct, and going down the river I wish to get the thread of the navigable channel of the river, and I take it you can do it more nearly by going down than by coming up; please state whether you would take the current going down, take advantage of the current of the river. How did the boats run going down?

A. They generally go down east of 37.

11 Q. Indicate on the map, beginning at Pecan Point. Here is Pecan Point on this blue print and here is the foot of Brandywine and here is Island 39. Tell, if you can recall, how the boats ran going down, with reference to that dotted line. Here is the dotted line. This is Devil's Elbow; here is Island 37 and here is Mckenzie Chute; here is Shawnee Landing up here and here is Dean's Island.

A. Coming down they come around this way.

Q. With reference to the dotted line, does that dotted line correctly represent the way the boats ran down the river?

A. Down the river, yes sir, but coming up they went this way.

Q. You mean in coming up the river they ran around west of Island 37 next to the Arkansas shore?

A. Yes.

Q. Did they take Barney Chute coming up—it is called McGavoc Chute on this map; was McGavoc Chute used coming up the river?

A. Yes, some, but not much, if the water was up.

Q. They only used that in high water?
A. In a fair stage of water.
Q. Normal water, average water, how did they do?
A. They went down around this way.
Q. Is that McGavoc Chute they used going down?
A. I never went through going down.
Q. You have been when you were piloting?
A. No, most of my work was up here, at the mouth of McGavoc Chute. I had little boats running in here from up there. I
12 seldom went above here, once in a while went up to Brandywine point.
Q. This dotted line, according to your recollection, is approximately correct for the down stream course of steamboats, running around Dean's Island through the Chute of 37 and then around Devil's Elbow and around Brandywine to the foot of Brandywine?
A. Yes sir.
Q. On the map there is a dotted line between Island 39 and Brandywine Island—how did the boats run there?
A. This is Fogleman's Chute; here is where they came through.
Q. I am talking about before the cut-off.
A. They went around this way.
Q. Did they go to the right or the left of Island 39; did steamboats in those days go to the right or left of 39, going down stream?
A. I don't remember about that.
Q. What about this channel around Island 37 and around by Shawnee Landing and Shawnee village?
A. When I first went to steamboating they claimed that used to be the old channel, the river men did, when I commenced in here in 1878.
Q. And it was still used in those days?
A. Yes sir, I went up in there as high as the mouth of McGavoc Chute, or the channel separating Dean's Island from the main land.
Q. That is about as far as you would run?
A. Yes sir. The channel around Shawnee had the reputation of being the old channel.
13 Q. But you used Chute of 37?
A. Yes.
Q. Was that dead water in those days?
A. Yes, it was not much account in there.
Q. Was there any current in low water?
A. No.
Q. In high water there was some current?
A. Yes sir.
Q. What about average water?
A. There was a little current.
Q. Going down stream, with a load say, was it the custom for the boats to hug the bank, the high bank, where the set of the current was against the bank, or did they go out in the middle of the river?
A. They kept out in the river coming down with a heavy load,

they didn't hug the shore, they kept out in the middle of the river. They wanted to keep in the current coming down.

Q. The set of the current was against the bank?

A. Only at some places.

Q. Around the bends?

A. Around the bends it was, but not every where.

Q. In those days, when you began running the river and before the cut-off, was it the general reputation through that section, that Island 37 was a part of Tennessee?

A. Yes. A good part of my trade was on that island. I know they all come over to Tennessee to pay their taxes.

14 Q. How about Island 39?

A. That was in Tennessee.

Q. Island 39 was in Tennessee?

A. Yes, sir.

Q. Are you sure about that? Wasn't that in Crittenden County, Arkansas, before the cut-off?

A. I don't know about that; I wasn't there before the cut-off; I wasn't familiar with it before the cut-off. I know Island 37 in 1878, 1879, 1880, they claimed was in Tennessee; they claimed they paid taxes in Tennessee and come over here for court troubles. I had several customers that lived on that Island.

Q. Is it the general law of the river, in going around bends in the river, that the main channel follows the outside of the curve of the bend?

A. You hardly ever see boats go in close to the bank of the bend in coming down; going up they do, to get out of the current.

Q. The point I was making was that the channel is illustrated by this dotted line?

A. You see this dotted line gets over cross here.

Q. That is a straight run down the river. When it gets down to Dean's Island it follows the outside of the bend?

A. Yes.

Q. Then it swung over and followed the outside of this bend?

A. Yes.

Q. And Below Cottonwood Point it swings over and follows the outside?

15 A. Yes.

Q. Then over to Point Able?

A. Yes.

Q. Then close to the outside of the bend around Devil's Elbow?

A. Yes.

Q. And around Brandywine Bar and follows the outside of that bend and crosses over here?

A. Yes.

Q. And wherever it goes around a bend it seems to follow the outside? Is not that the general course of the outside of the channel of the river?

A. Boats don't follow that line closely, they try to get the benefit of the current coming down.

Q. How far do the boats run from the bank to take advantage of the current?

A. Out in the middle of the river mostly, that is where the heaviest current would be, unless it was somewhere where it bore in, then they won't get too close.

Q. Why won't they get in too close?

A. They are liable to hit the bank if the current bore in.

Q. Is not the set of the current over against the bank?

A. At some places but not always.

Q. Going around bends?

A. Not all the time; not when it is down a straight stretch of the river. There is a pretty good bend in there.

Q. Opposite Pecan Point, there is a little bar sticking out?

A. Yes.

16 Q. Boats going down and up the river had to dodge that point?

A. Yes.

Q. In going down they took advantage of the current almost every time?

A. Yes.

Q. Did you make the landing at the head of Island 37 on the Smith place? It is just in there between 37 and the channel that goes to Shawnee.

A. Yes, we used to go in there sometimes. There is Mrs. Smith's right there.

Q. That is on Island 37 on the Tennessee side?

A. Yes.

Q. In going down to Shawnee where did you make the crossing; you crossed somewhere between there and Shawnee to the Arkansas shore, didn't you?

A. You see that was not so wide in here; the channel was close to the Arkansas shore nearly all the way around.

Q. The channel was against the Tennessee shore at the head of 37—wasn't the current against the head of this island right here?

A. Yes, when it come in here and went on around and crossed over to the Arkansas shore.

Q. You crossed over to the Arkansas side?

A. Yes; I come up there once in a while; there was a negro had a place right here and John Wise was right along in here at the lower end of Island 37.

17 Q. Have you any distinct recollection of how you made the crossing from the head of Island 37 here coming across down this old channel toward Shawnee?

A. No, I never went up in there a great deal; just once in a while; I never went up this way when I was piloting; I went through the chute. I went up here when Captain —— was building a house at Idaho, near Pecan Point; I carried all the material up there for him and made several trips up there carrying material to build his house and barn. I very seldom went above here. My pilot license covered the head of Island 37.

And further deponent saith not.

18 The next witness, A. C. EDMONDS, being first duly sworn, deposed as follows:

Examination.

By Mr. Van Deventer:

Q. What is your name, residence and occupation and age?
A. A. C. Edmonds; 75 years old; farmer.
Q. Where do you live?
A. Old fourth district.
Q. Did you ever live in the vicinity of Dean's Island?
A. Yes.
Q. When?
A. I was raised there.
Q. Were you there at the time of the Centennial cut-off?
A. I wasn't living right in that neighborhood.
Q. Did you ever run on the river so as to be familiar with the way the river ran in there?
A. No, I wasn't on the river.
Q. Do you know anything about the river in the neighborhood of the cut-off, know how the channel ran before the cut-off and after the cut-off, what changes have been made?
A. It run the Tennessee shore.
Q. From your observation, when you lived there before the cut-off, could you tell us how steamboats ran that river, with reference to the different shores, the Tennessee shore and the Arkansas shore, around Brandywine and Devil's Elbow?

A. The main river bore sort of over, come on this side, on
19 the Tennessee shore.

Q. How far was the main channel from the bank of the river?
A. Right along the bank.
Q. Hugged the bank?
A. Yes.
Q. After it got past Brandywine what did it do?
A. Hugged the bank all up that bend.
Q. Look at this map on page 815 of 119 Federal Reporter, and examine the map with reference to the dotted line. Here is Fogleman's Chute at the foot of Island 39.
A. The channel runs with the dotted line, from the head of 39.
Q. What state is Island 39 in; is it in Tennessee or Arkansas?
A. I don't know, it seems to be in Tennessee.
Q. Which side of the island did the main channel run on?
A. Tennessee side.
Q. The main channel ran on the Tennessee side?
A. Yes.
Q. There is a chute between 39 and the Arkansas shore?
A. Yes.
Q. You say 39 seems to be in Tennessee?
A. Yes. This property here caved in, all in this bend here above 39, in 1866 caved in so we had to move out.

Q. You mean on the Tennessee side to the north end of Brandywine?

A. Yes, caved around that bend, around what they called Bateman's Bayou.

20 Q. I will ask if it is not true that along around Dean's Island, where these sharp curves are, and in following the sharp curves of the river there, if the boats did not run as close to the Tennessee shore as they could get and frequently close enough for falling trees to reach them?

A. I don't know about that; in turning they had to hug the shore.

Q. How close to the high bank would you say the boats would ordinarily run, in hugging the Tennessee shore; about what distance from the high bank?

A. I don't know; I can say this, they run so close you could throw a rock on them.

Q. They would be nearly a mile, then, from the shore on the other side?

A. Yes.

Q. Do you recall whether boats used to run so close,—that the main channel was so close to shore, that trees in falling would reach out as far as the boats would go by?

A. Yes, they could.

Q. Going back to Brandywine, observe that dotted line and tell us how boats used to run with reference to the dotted line?

A. Come down this way and went down to Fogleman's chute.

Q. Went down on the west side of Brandywine and down to Fogleman's chute?

A. Yes.

Q. Please follow up the river, as it used to be before the cut-off, and tell how the boats used to run, if you know.

21 A. I don't know that I can tell you anything accurate about that.

Q. You don't know after they got past Brandywine?

A. It seems to me that this line is drawn about like they run. This is where the heavy caving was in 1876, around Bateman's Bayou.

Q. You say you were not familiar with how the boats ran after they got around the elbow?

A. No. I think that line is about the way they run.

And further *depend* saith not.

22 The next witness, WM. P. HALL, being first duly sworn, testified as follows:

Examination.

By Mr. Van Deventer:

Q. State your name, age, residence and occupation.

A. W. P. Hall, age 77; I live at 1621 York Avenue, Memphis.

Q. State if and when you ran either as captain or pilot on the Mississippi River.

A. I always ran as captain; I commenced running on the Mississippi River in 1878. I ran from Hale's Point, came out by Hale's Point and through to Memphis. Later on I went to New Madrid.

Q. Were you familiar with the river around Devil's Elbow and Brandywine, down river, before the Centennial Cut-off?

A. I was not familiar with it before the cut-off. I commenced a year or two after the cut-off was made; the cut-off was made in 1876; about two years after the cut-off was made I commenced to run.

Q. Were you on the river in any capacity before the cut-off?

A. I commenced steamboating in 1876, the year the cut-off was made, but I only steamboated from Hale's Point for about a couple of years, and then I extended my trips through to Memphis.

Q. Tell us what you know of the cut-off?

A. There was no Centennial Island before the cut-off; when that cut-off was made it formed the island. The river went around
23 by Chas. Morris' place and went around on this side of Brandywine and up along here and down the east side of Brandywine and 39—the river cut through here in 1876 and formed the cut-off; there was no island there until the cut-off was made. The river after the cut-off ran down on the west side of Brandywine—did not go by Bateman's.

Q. Did you know of Dean's Chute?

A. Yes, I have been up through there by steamboat.

Q. Was there a Dean's Island before the cut-off?

A. Dean's Island is above Centennial.

Q. Was the Tennessee bank opposite Dean's Island the high and caving bank?

A. I don't know about the banks before the cut-off; I don't know about that until about a year and a half or two years after the cut-off was made, I could not say, but the banks were all naturally high, that is after the cut-off, I suppose they were before.

Q. Was the Arkansas side the sloping bank?

A. I don't know about the Arkansas side before the cut-off; after the cut-off I have been around old river; near the foot of Dean's Island the banks were generally sloping. That part of the river wasn't called old river until after the cut-off.

Q. Did steamboats hug the Tennessee shore before the cut-off?

A. I don't know about before the cut-off. I commenced to run after the cut-off was made.

24 Q. Did the river run around Island 37 before it was pushed down into McKenzie?

A. I suppose so, I was not familiar with the river until after the cut-off; I commenced running after the cut-off.

Q. Did McKenzie Chute then become the main navigable channel?

A. The river come around this way by Chas. Morris' on the west side of Centennial Island; I understand there was no island until after the cut-off was made.

(This witness being very deaf it was practically impossible to make him understand and cross examination was waived by Mr. Ewing.)

25 The next witness A. M. HILTON, being first duly sworn, deposed as follows:

Examination.

By Mr. Barton:

Q. State your name and occupation?
A. A. M. Hilton, lumber business—Dillman Egg Case Co.
Q. Where do you live?
A. Caruthersville.
Q. Does your company own land on Island 39?
A. Yes.
Q. Did you have an abstract of the title of that land when you bought it?
A. Yes.
Q. I will ask you in what state is it generally understood and believed, in that territory, that Island 39 is situated?
A. State of Arkansas, Crittenden County.
Q. In the examination of the title to that property was it traced to the grant from the State of Arkansas?
A. Yes.
Q. Dated back to the original grant?
A. Yes.
Q. I will ask if you bought from Mr. Tom Turpin who furnished the abstract, your company I mean?
A. Yes.
Q. How old are you?
A. Thirty-six.
26 Q. Do you know anything about the river before the cut-off?
A. No sir.
Q. Where is your abstract?
A. I think in Mr. Harry Boyd's office. I will get it and bring it up to you.

And further deponent saith not.

27 The witness, JOHN S. MAINGAULT, being first duly sworn, deposed as follows:

Examination.

By Mr. Van Deventer:

Q. State your name, age, residence and occupation.
A. John S. Maingault, age 50 years, steamboat captain and pilot, residence 275 Mill Avenue, Memphis, Tenn.

Q. Please state how long you have been captain or pilot on the Mississippi River?

A. About twenty years.

Q. Are you familiar with the Mississippi River as it was before the Centennial cut-off?

A. Yes.

Q. Can you recall how you ran that river, with reference to its main channel, giving the banks and distances from the banks and land marks on the banks, in and around Centennial cut-off before the cut-off?

A. No, the cut-off was made before I began as a pilot, but I have been on a tug boat around Centennial Island, up in there. The cut-off come through there. This used to be Fogleman's outlet. Here is where the cut-off was made; the river cut through here and went around this way, around Brandywine and come out down here.

Q. As I understand, you ran on a boat, but you were not a pilot in those days?

28 A. I was not in the pilot house.

Q. So you could give no distances from the bank and give no land marks?

A. No.

Q. Either around Centennial or around Brandywine?

A. No; I have run both places, but was not in the pilot house.

Q. In going up river you take advantage of the eddies?

A. Yes.

Q. In coming down you come down the main channel?

A. Yes. Some pilots stay in the channel all the time, but they are not working by the job or trip. Usually in coming down they stay as near the current as they can. In low water there is danger of running on a bar and they stay in the main channel both ways, up and down.

Q. Could you give us any idea, running that river before the cut-off, about how far boats ran from the bank around the bends?

A. No, except at one crossing, that is Morris' place, it is now Pacific Place; the boats came across here like that, crossed over from this shore; they used to call this Chas. Morris; it is the Pacific place now, used to be the old Charley Morris' place. Charley Morris would bring his lamp out.

Q. How far from his residence is the landing?

A. His residence was back some distance.

Q. From what point would you run straight to his landing?

A. I don't know exactly. He kicked about bringing the lamp for us and afterwards set up a pilot house on a steamboat that

29 sunk, so they would not call him unless they wanted wood; if he knew they wanted wood he would come out. The old Pacific place is about here.

Q. On the old map, wasn't there a mark indicating where some steamboat was sunk, call- "Pacific"?

A. I think there was; I think that is where it got its name from.

Q. That was known as Charley Morris' at the foot of the bend?

A. Yes; it belongs to Golightly now, did a few years ago.

Q. Do you remember how they ran from that place?

A. No.

Q. You don't know any other marks any where in that bend or around Brandywine?

A. No, I don't know any of the old marks on that Centennial or Brandywine except the Morris place and across the river from Centennial Island.

Q. Do you recall anything about the channel of the river around Pecan Point?

A. It has been about the same it is now ever since I knew it, right around Pecan Point; I don't think you will find much change around Pecan Point on the government maps, except the bank has been cutting back on one side?

Q. On which side?

A. On the Arkansas side. You can get almost any kind of information you want if you go to the Engineer's office in the custom house, from the records. There is one boat that makes surveys. The bank will be here this season and next year in like this, and the next map will show the bank here.

30

Q. How far down did they come on those trips?

A. Cairo to the mouth of White River. I am satisfied you can get access to the government maps if you desire them. They run what is called a shore line, used in revetment work; they show the channel and the bank line.

Cross-examination.

By Mr. Caruthers Ewing:

Q. How old are you Captain?

A. I said 50,—about 55, really.

Q. What were you doing in 1876?

A. That I could not tell you. It is too far back for me to remember.

Q. You were then about 11 years old?

A. I was working on a steamboat, but I can't tell where I went to.

Q. Are you familiar with the land and the river lines, commencing at the head of Dean's Island, as they existed around about 1874, 1875, 1876?

A. No, sir; I was not in the pilot house then and that didn't come in my business.

Q. Without regard to whether you were in the pilot house, you have some idea of the river, from being on the boats, when you were 11 years old, and passing around Dean's Island?

31

A. No, I wasn't up in there much at that time.

Q. You don't know how it was before the cut-off?

A. No.

Q. About what year did you commence to know that river and the land lines, commencing at the head of Dean's Island and going around through there, following the river down and through the cut-off?

A. About fifteen years ago.
Q. You know nothing of McKenzie Chute at that time?
A. I never was on it; I know where Bateman's Bayou is.
Q. Did you know that McKenzie Chute was the main channel of the Mississippi River prior to 1876, in its southward journey from Dean's Island?
A. That was at the head of Centennial?
Q. Do you know where the river ran before the cut-off?
A. Yes, you can see the marks up there now.
Q. Did you know the river in those days ran around Island 37 and north of it and later adopted McKenzie Chute as its channel?
A. I didn't know that. You can see the marks there below the government landing.
Q. What is the government landing?
A. Happy Valley; that is where the river went in and came out at Point Lowe.
Q. You know, of course, I suppose, that the Tennessee bank, opposite Dean's Island was the high bank, whereas Dean's Island was the sloping bank?
A. No, I didn't know that; when I was in the packet trade
32 I had to go up across the river, but I never paid much attention to the height of the bank.

And further deponent saith not.

33 J. A. Osborn, being first duly sworn, deposed as follows:

Examination.

By Mr. Barton:

Q. Please state your full name, your age, resident and occupation.
A. Jos. A. Osborn, 69 years old.
Q. Where do you live?
A. Island 37.
Q. What is your occupation?
A. Farmer.
Q. How long have you lived on Island 37?
A. Since 1885.
Q. Were you there at the time the Centennial Cut-off took place?
A. I was on Brandywine Island.
Q. On Brandywine Island?
A. Yes, opposite where the cut-off want through.
Q. Where were you from?
A. Ohio.
Q. How long had you lived on Brandywine Island?
A. I hadn't lived there long; I lived on Brandywine, on Dean's Island and on 37. I went there in 1872.
Q. You went there in 1872?
A. Yes, lived around that neighborhood until 1885 and have lived on 37 continuously since 1885.

Q. Are you familiar with the way steamboats ran the main navigable channel of the river from Pecan Point down past Brandywine?

A. Yes.

34 Q. Will you tell us, as best you can recall, how the boats ran that river from Pecan Point. Take this map that appears on page 815 of 119 Federal Reporter, being a reproduction of Suter's map of 1874, and tell us how the steamboats ran the river, coming down, from Pecan Point?

A. We would come around Dean's Island on this side, around 37 clear on around.

Q. We want to know what course the boats adopted after leaving Pecan Point; which shore did they hug?

A. Swung around about here to the Tennessee shore.

Q. Crossed over to the Tennessee shore?

A. Yes.

Q. Then hugged the Tennessee shore?

A. Yes, down past the head of 37, then went back across and hugged the Arkansas side.

Q. Did they go down McKenzie Chute?

A. No, went clear on around past Shawnee Landing and hugged the Arkansas shore down there.

Q. Where did it first strike the Arkansas shore after crossing from Tennessee side?

A. About the foot of Dean's Island Chute. That is where it made the turn; it struck it higher up, 2 or 3 miles higher up before it got to that chute.

Q. It began to cross over?

A. Yes, this way.

35 Q. Where was the crossing from the Tennessee to the Arkansas side after they got around Dean's Island?

A. About half way from the head of 37 to what we called the foot of Dean's Island.

Q. Then what did they do?

A. Went around by Shawnee Village, and around to Point Able.

Q. Point Able was away down the river?

A. Not so very far.

Q. How far did they hug the Arkansas shore, going around 37?

A. They hugged it until they got to the foot of 37 and then crossed over here.

Q. Below the foot of 37 you crossed over to the Tennessee side?

A. No, before getting to the foot of 37.

Q. At what point—was there any landing?

A. Point Lowe.

Q. They started to make the crossing at Point Lowe?

A. No, they crossed above and went past Point Lowe—passed Point Able, then went across to the Arkansas shore.

Q. Was there any landing on the Arkansas side, opposite Tennessee, where they began crossing?

A. That is what they called Pacific place.

Q. That is at the lower end of the crossing?

A. That is at the lower end, after they got across the river.

Q. Going down from Shawnee Village where did they first leave the Arkansas bank to make the crossing?

A. From Shawnee, they left a little below Shawnee and
36 went down close to the Tennessee side; they could have gone either way but it was deeper on the Tennessee side.

Q. The side near 37?

A. Yes.

Q. They went near that side?

A. Yes, below Shawnee Village.

Q. Then did they cross over to the Arkansas side after they got past the mouth of McKenzie Chute?

A. Yes.

Q. They went over on the Arkansas side?

A. Yes.

Q. When did they swing over to the Tennessee side again?

A. Didn't come back until they got down here. The river went clear around that way.

Q. I want to know after they got back on the Arkansas side, below the mouth of McKenzie Chute, if they did go back to the Tennessee side, when they began to go back, they went around this way and over to Point Able.

A. Yes, then around the elbow.

Q. Where was the crossing from the Tennessee side to the Arkansas side to go around the elbow?

A. That was Point Able.

Q. They crossed from Point Able over to Morris' place?

A. Yes, Pacific place, then followed the high bank on the Arkansas side around the elbow until they got past Fogleman's chute; after they got past Fogleman's chute they crossed back and hugged the bank on the Tennessee side, around this bend on around down
37 to past Bateman's.

Q. Where did they cross after they got past Bateman's?

A. There was no crossing they came into the main channel.

Q. What about Island 39?

A. That is right at the foot of Brandywine.

Q. Did they go between Brandywine and 39?

A. No, they went around 39, went east, on the left hand side as they went down.

Q. What State is 39 in?

A. Arkansas.

Q. All the time you lived there?

A. Yes.

Q. Did the boats use to run between 39 and Brandywine?

A. Not since I been there. I came there in 1872.

Q. So far as you can recall they never have run that way?

A. Not that I know of; there was hardly any chute there of any size; there may some little boats have run through, but no big ones run through.

Q. The main channel did not run that way?

A. No sir, never did since I been there.

Q. Do you know anything about Cottonwood Point? You see where that is, at the mouth of McKenzie Chute on the map?

A. Yes.

Q. Has that land been made there since you were there?

A. There has no land been made at Cottonwood Point.

Q. This is located about the mouth of McKenzie Chute?

38 A. This is below. This is made in below Cottonwood Point, but very little.

Q. These are still high banks around there?

A. Some of them.

Q. What about Shawnee Village; is that about the same location it was before the cut-off?

A. Yes.

Q. Is the Arkansas bank about the same location it was before the cut-off?

A. Yes.

Q. Around the north side of 37, the old channel?

A. Yes.

Q. All in to where old river opens up into the present channel?

A. Yes.

Q. Suppose you come like this and run into old channel over a boat, the river there is about the same as it was in 1876?

A. Yes.

Q. How far up?

A. Way up to Dean's Chute. There is very little made land on the Arkansas side.

Q. Do you know whether on the left bank of Island 37 there was an old road?

A. Yes, there is a road there.

Q. Was there a road on the left bank of the river in 1876?

A. Yes, on the Tennessee side.

Q. Where that road is now, it was there in 1876 on the

39 high bank of McKenzie Chute?

A. Yes, in 1872.

Q. It was there at the time of the cut-off?

A. Yes.

Q. Tell us exactly where that old road was in 1872 on the bank of the river.

A. It was on the edge of the bank of Island 37.

Q. On McKenzie Chute or old river?

A. On old river.

Q. Is that old road right along there?

A. Right along the bank on 37.

Q. That road on the bank of 37, on the right hand side of McKenzie Chute, and on the left hand side, going down, of the river as it passed around 37—that road was there before the cut-off, or rather it was at the time of the cut-off and it is there now?

A. Yes.

—. That road marked the Tennessee side of the Mississippi River at that time?

A. Yes.

Q. You were asked about 39. I will ask you whether, from the time you first heard of that territory, it has been considered or generally known and understood that Island 39 was in Arkansas?

A. Yes, everybody said it was in Arkansas.

Q. The people who have lived on Island 39 have always, since you have known anything about it, claimed to be living in Arkansas?

A. Yes.

Q. The main channel of the river near and about Island
40 39 was *was* always supposed to separate 39 from Tennessee, wasn't it?

A. Yes, it did separate it; that was the only way there was to go with the big boats; they could not go through the little channel between 39 and Brandywine, the big boats could not go through there. I was a fisherman on the river is how I come to know. I pulled around there frequently in a skiff in all stages of water.

Q. State how many years you fished around there?

A. In 1872 to 1885 continuously; and I cut timber on Brandywine and on 37 and rafted and floated it to Memphis and fished the balance of the time. I would not fish one place, would move around.

Q. Do you know how the steamboats ran the main navigable channel? Examine that map and look at the dotted line; here is Pecan Point. Start here with Pecan Point, follow this dotted line and tell us what you know, whether that line is correct as to the way the steamboats ran in 1876?

A. That is not correct.

Q. Why is it not correct?

A. They run through McKenzie Chute, sometimes the boats would run through here.

Q. You mean run through McKenzie Chute?

A. Yes.

Q. Tell us why the map is not correct, if it is not.

A. This was the main channel around here; around north of 37, around by way of Shawnee Landing was the old channel. After 1876 of course the boats run through the cut-off.

41 Q. I want you to tell in what respect this Suter's map is not correct.

A. The boats could come around through McKenzie Chute, but most of them went around this way, around by way of Shawnee Landing.

Q. After they got past the mouth of McKenzie Chute how about the line on that map?

A. It is pretty near right; they could run either way, either side.

Q. You mean they could run either side after they got past the mouth of McKenzie?

A. Run either side until they got to Point Able, then had to go to the Arkansas side.

Q. And they followed the Arkansas shore around Devil's Elbow until they got to the head of Fogleman's Chute and then crossed over to the Tennessee side?

A. Yes, and hugged the Tennessee shore.

Q. Hugged the Tennessee side?

A. Yes.

Q. Do you think that dot-ed line is approximately correct?

A. Yes, I think it is approximately correct for the main channel of the river. Some boats run through here, through McKenzie.

Q. The main boats ran by way of Shawnee Landing on the north side?

A. Yes.

And further deponent saith not.

42 The witness, L. E. Patton, being first duly sworn, testified as follows:

Examination.

By Mr. Van Deventer:

Q. State your name, age, residence and occupation.

A. L. E. Patton, age 72. I am a resident of Mississippi at present; the first of January I left Tennessee.

Q. Please tell us what experience, if any, in steamboating on the Mississippi River you have had, giving the years, if possible.

A. Since 1869, as a pilot and boat owner on the river.

Q. Were you familiar with the channel of the river, running down from Pecan Point to the foot of Brandywine, before the cut-off?

A. Yes.

Q. Coming down the river the pilots follow the main navigable channel, do they not?

A. Yes, coming down they do; going up they cut the corners.

Q. But coming down you follow the main navigable channel?

A. Yes, we knock out to the middle to get the benefit of the current.

Q. Will you tell us how you ran that river coming down, giving the marks, so as to locate the land marks on the bank, so we can lay off the line. State how you ran the river from above Pecan Point to the foot of Brandywine, before the cut-off.

A. In 1870 on up to 1876, near the cut-off, we ran the usual route; you know there were no lights those days, we depended
43 on the marks.

Q. That is what we want to find out—what were the marks and what was the usual route?

A. I could not designate the marks because our work was usually in the day light, you know; coming down with the tow we would hold to the middle of the river; when we were coming into a bend we would head out there and make the turn. If you have any maps of the river at that time I could point out the line.

Q. Here is what is known as Suter's map or a blue print of Suter's map of 1874.

A. You know they made a survey in 1882.

Q. We are considering before the cut-off. Take Suter's map; begin at Pecan Point and running down the river; here is Pecan

Point. This map was made in 1874, two years before the cut-off. How did the steamboats run, commencing at Pecan Point and on down to the foot of Brandywine?

A. That line there is about the way they ran along here.

Q. You mean the dotted line?

A. Yes. Down in here at Thomas' Landing we come in there close—the Tennessee shore is caving bank—and down in here to over here, right close to the Tennessee bank, and we kicked out there straight along this way to keep from hitting the bank.

Mr. Ewing: Right here, where you say you run close to the Tennessee shore, indicating a point right opposite Dean's Island—how close did you run to the Tennessee shore there?

A. We followed the Tennessee shore right close.

44 Q. Could you give some idea of how close to the high bank you would run?

A. If you go too close you would hit the bank; we tried to keep from hitting the bank; we come along in there.

Q. Do you know how the packet boats ran the river in here?

A. They favored the point as much as they could, run the point as much as they could, which would be the left hand shore in here. That is Dean's Island bar there.

Q. Had that bar grown out there before the cut-off was made?

A. Yes, this has been building all the time.

Q. Do you remember McKenzie Chute?

A. We called it the Chute of 37.

Q. It is known in this record as McKenzie Chute.

A. We called it the Chute of 37.

Q. Did mail boats go around by Shawnee Village before the cut-off?

A. Yes, they frequently had business around there.

Q. It was a navigable channel?

A. It was a channel they used, but it was what we called a dead channel; this 37 was the real channel.

Q. Do you know when boats began to use 37 generally?

A. They were using it when I first went on the river in 1869, 1870, 1871, 1872 and 1873 right on up to the time of the cut-off.

Q. Would you think that this dotted line, then, represented the navigable channel, as near as you could get it, following it on down here?

A. That is about right. Here is Point Able. Here is the

45 old woodyard above Plum Island; we run in there and out to over here to Point Able.

Q. From what point below Cottonwood Point, going down, did you begin to cross over?

A. You crossed coming down in the bend.

Q. You followed the Arkansas shore closely?

A. Yes, pretty close; then you swung out here, and this was a shallow place in the river right opposite Plum Island, the boats went aground there frequently.

Q. Where did you begin to cross over, below Cottonwood Point to Point Able?

A. We called it Plum Point, you know.

Q. Do you know of a landing by the name of Viola landing?

A. Yes, there was a wood-yard there. Morris' is a way down below Plum Point. We began to cross over here.

Q. That is where you began to cross over, at Viola landing?

A. Yes. We lived at Viola and kept a boat there to furnish wood for the steamboats.

Q. On that map it is called Viola Landing?

A. Yes; that is about where we pushed out.

Q. And headed practically straight for Point Able?

A. Yes, pushed across here to Point Able.

Q. Where did you cross after you passed Point Able?

A. We dropped right down into the bend, right down below Pacific place—Morris' place.

Q. Did you hug that bank?

46 A. We went right in there. There was a place in here that we called Blue Mud Point. The main channel followed the big bank.

Q. How far?

A. Past the mouth of Fogleman. There was a little "draw" right in here; if you pulled into that you would push around Brandywine.

Q. You would be drawn down in Fogleman's chute?

A. If you got down in here you would roll around and before you could get straightened out you would be in the chute.

Q. When you passed Fogleman's—when did you begin to cross over?

A. You run around the bend pretty close, then you set over toward the old Massay or Trigg place right there.

Q. Near the Tennessee shore?

A. Toward the Tennessee shore. You held into that straight down there, close to Batesman and on down until you opened out here. This channel that you have laid off, here at Island 39, in 1874 we didn't run that, we tried to push outside, because there had been some timber to cave down, and we pushed over here toward the Tennessee shore—between the Tennessee shore and 39.

Q. That was not the channel in 1876?

A. That was possibly the deepest water, but our navigable channel was outside of that island.

Q. On the left bank of 39?

A. On the left bank coming down.

Q. Do you know what the general reputation was at that

47 time, as to whether Island 39 was in Arkansas or Tennessee?

A. 39 was always in Arkansas. I lived there, owned part of that island at one time and all of Brandywine.

Q. And that was in Arkansas?

A. Brandywine belonged to Crittenden County. I bought Brandywine in 1880.

Q. And you went around this bar, Dean's Island bar, and followed around the Tennessee bank, around this upper bend around Dean's Island; when did you begin to push over to get to 37?

A. This was a bar under this point, you know.

Q. You mean this point on the Tennessee side?

A. Yes. The boats would come down in there and went around so close that you would have to push out to miss that chute, or you would go in and then you would land down to the head of that island 37, it was caving in.

Q. When you came to the chute of 37 you pushed over to the head of 37?

A. You don't have to push that way; you run up to this point and kept working out to keep from getting drawn in there with that caving bank.

Q. The head of 37 was caving bank?

A. Yes, along above the Smith field was caving. This is a good map of it at that time.

Q. All the time you knew it, opposite Dean's Island, Tennessee was caving and receding shore and Dean's Island was being built up?

A. At the upper end of Dean's Island there was a bar.

Q. This Suter's map is a good reproduction of the river at
48 that time?

A. Yes, I think so.

Q. Is the bar there now or has it drifted down the river above the landing called Dean's on this Suter map?

A. I have not been up there in, I guess, close on to two years; but this place has filled in here and this bar here at the head of Dean's Island, that bar has always been there, but this has been backing in here, you know, to Pecan Point and caving in there; at Dean's Island a great deal of that has gone away.

Q. Did you ever run old river around 37?

A. We frequently went that way if we had business in there.

Q. Where did you begin to make the crossing there?

A. You mean going down river—we never run it going down; if we had anything up in there we would go around and bring it up.

Q. You didn't run it going down?

A. No, it is slack water; there was very little current in there.

Q. I notice this dotted line indicates the navigable channel to be close to the bank. I have been up in this territory and around this bend in the Mississippi River and I saw a boat run so close to the bank, that a tree falling just behind it, would have hit the boat if the boat had not moved out just in time. Was it usual to run that close?

A. In going up the river it is usually in the judgment of the pilot as to the best way to get up. I believe I remember another similar incident where a boat went up to the head of 40 and could not get around the point at 40 and stopped and dropped back and
49 the boat got so close to the bank the bank caved in and struck them; this sank the boat and she went down in the chute and drifted out on the bar.

Q. As a general proposition, in the Mississippi River the main navigable channel follows the outside of the bend?

A. When there is a bend the river usually rubs the bank.

Q. That is what causes the bank to cave?

A. Yes, the water rubs in and the greater the velocity the bigger amount of dirt it carried away.

Mr. Ewing: In the slack water on the opposite side of a heavy curve logs will land and sink and be submurged.

A. In getting out of a bend, you know, they don't get down in the draw, they get down on the bars; for instance, snag boats pull them up and try to cut off a snag and they roll down and we would not get hold and catch them in the bend, but it will roll around and get on the bar. That makes a dangerous place.

Mr. Ewing: At times when the water is up on the lower part of Dean's Island I have seen motor boats and I notices the fellows are very keen to cut around that bar because of sunken logs.

A. That is the reason we had to be careful to keep away from the logs. I had two or three tug boats and we had to pull out where it is safe, more over towards the edge in low water to get the easiest current going up.

Q. Coming down you followed the main navigable channel?

A. Followed the channel until we found we were going into another bend and then we would head out.

50 Q. Does that dotted line on Suter's map indicate the thread of the main navigable channel for packet lines as well as for tow boat lines?

A. Yes; tow boats coming down the river would not get as close to the bank as the line indicates where the deepest channel is, because it would be dangerous, you know; they keep a safe distance from there, we call it the "set," you know; when working down a bend an experienced pilot can tell when he is getting too close and he will begin to turn out.

Q. The side wheel packets, passenger and freight, did they go close to the bank?

A. They run the channel down stream, coming down.

Q. Can you give us any idea from that map and your own experience how far that thread of that channel would be from the bank in yards and feet?

A. I suppose that map is drawn from scale, it looks like it is. The deep "set" is similar to what we see in creeks, you see a curve of the creek bank—the principal is the same in all flowing water—right at the base you will find it. I was in the employ of the government for several years, in river improvements, and used to do sounding up from here (Memphis) and we would find the deepest water up by the old elevator, and the mouth of Wolf River.

Q. That is next to the high or curving bank?

A. Yes.

Q. Did that condition prevail all the way up the river?

A. That is the law of the river, you know. The general work was in 1882.

51 Q. Did you make a survey in 1882?

A. No.

Q. Here is a map of 1879-1880. Let me ask you with reference to Viola—is this land in here part of the D. C. Barrow estate?

A. Dave Barrow estate.

Q. That is at Viola Landing?
A. Yes.
Q. From his place you began to head off toward Point Able?
A. Yes, after leaving his place we pushed out to Point Able.
Q. There is one thing that you, perhaps, don't know anything about, that is important to us. Right opposite where this chute of 37 comes out into old river there is a big tract or area of made land; do you know whether this filled in before or after the cut-off?
A. The fill outside the levee was made—it was a bar, and built up and grew out. There was a bar there before the cut off and the channel ran to what we called Cottonwood Point.
Q. The channel ran east of Cottonwood bar?
A. Yes, it run outside of that; that was old river there. After that cut-off the cut filled up very rapidly.

And further deponent saith not.

52 The next witness, J. M. Speck, being first duly sworn, testified as follows:

Examination.

By Mr. Van Deventer:

Q. State your name, age, residence and occupation.
A. J. M. Speck, born in 1849; farmer at Frenchman's Bayou and also own a store; about seventy years.
Q. You are 70 years old?
A. About, yes.
Q. Did you ever run on the Mississippi River?
A. We used to run to the head of Island 37.
Q. Can you tell us how boats usually ran around Devil's Elbow, Island 37, McKenzie Chute—from Pecan Point around to the foot of Brandywine, before the cut-off? Take this map, appearing on page 815 of 119 Federal Reporter. Tell us how the boats ran down river from Pecan Point to the foot of Brandywine.
A. They used to come around the bend here and hug the Elbow side. Old Dave Barrow used to own this in here.
Q. Did you ever run on the river in a steamboat?
A. I never run in a steamboat; I always had a skiff. I had an uncle that lived on 39 and we would go from 37 down in a skiff and back.
Q. You came to 39—that is at the foot of Brandywine?
A. Yes.
Q. What state was Island 39 in?
53 A. In Tennessee—I don't know whether it is or not; it was on this side.
Q. On the Tennessee side of the channel?
A. It was on the Arkansas side of the channel.
Q. Steamboats ran between 39 and the Tennessee shore?
A. Yes, through the chute of 39.
Q. Was there only one channel?

A. Two channels; the main channel was on the east toward the Tennessee shore. Old man Bateman was on that side.

Q. Do you remember McKenzie Chute when the boats went through?

A. Yes.

Q. Can you tell us how the boats ran around Devil's Elbow and Brandywine? Here is Charley Morris'.

A. Yes, that is Charley Morris' place.

Q. Can you see that dotted line on that map?

A. I see something.

Q. Do you remember Dean's Island?

A. Yes.

Q. Let us commence here and go down river, I am following the dotted line, immediately north of Dean's Island. Now can you see this dotted line coming on around?

A. Yes.

Q. Coming around Dean's Island, around to McKenzie Chute, over to this point on the Arkansas shore, then back to the Tennessee shore, then crossing toward Cottonwood Point on the Arkansas shore, then hugging the Arkansas shore from below Cottonwood Point down to Viola, then crossing over toward Point Able on the
54 Tennessee shore, then over to Devil's Elbow on the Arkansas shore, and hugging the Arkansas shore over to Fogleman's Chute, then crossing over here to the Tennessee shore again and hugging the Tennessee shore around the head of Brandywine, where the cut-off came through. Does that dotted line indicate about the way the boats ran before the cut-off?

A. That looks about like the way the boats run, as far as I can see. They hugged first one shore and then the other.

Q. They hugged the deep side?

A. Yes, the deep side, the stream wasn't so swift on the opposite side; where it is deep they hug that point.

Q. Take the curve here, where the current ran around against this bank. This was the deep side?

A. Yes.

Q. That was the deep channel over there?

A. Yes.

Q. Whenever they struck a place like that they would come over here on this side?

A. Yes, they cross the river back and forth.

Q. Whenever they come to a bend they follow the outside of the curve?

A. Yes.

Q. Where do you live?

A. Island 37; I left there in 1860.

Q. You had lived there before the cut-off?

A. Yes, I lived there before the cut-off.

Q. Were you familiar with the river before the cut-off?
55 A. Only from the head of 37 and Dean's Island down, I used to go around 37 in a skiff.

Q. Do you remember where the steel bridge is that goes over from Stockley's?

A. I haven't been on that for a number of years.

Q. At the time of the cut-off the boats went around on that side of Island 37?

A. Yes.

Q. After leaving the mouth of the chute did they run close to the Arkansas bank in there?

A. Crossed over to Arkansas side.

Q. Ran the Arkansas shore how far from there?

A. Not over a mile or two.

Q. Then ran back to the Tennessee side?

A. Yes.

Q. Then below that, down there at the point of the island, how did they run at the lower end of Centennial, toward Golightly's?

A. They ran over on the Tennessee side toward the Pacific place.

Q. To the Pacific place?

A. Yes.

Q. From the Pacific place how did they run?

A. Held to the Arkansas side, then, from there, going to the cut-off they crossed over to the other side.

Q. Between St. Thomas and the Pacific place for some distance they held to the Tennessee shore?

A. Yes.

56 Q. Are you familiar with a little piece of land down outside the levee, right across from Mr. Dresback?

A. Yes.

Q. Was that part of the channel of the river at that time?

A. You can see where the boats used to come along?

Q. You mean next to the levee, that high bank?

A. It is a bluff bank at the edge of the levee that was there when I was there.

Q. This is filled in, all made, filled in the old channel?

A. This is made land. I don't know anything about that.

Q. Did that fill make before the cut-off or after?

A. That was made in there about the time of the cut-off. I wasn't there at the time. I left here in 1868 or 1867. I don't know when that was made. It was there when I come back. I went to Texas and stayed a while and that bar was made when I came back.

Q. That bar was made when you came back?

A. Yes.

Q. What time did you come back?

A. In 1869 or 1870.

Q. That bar was made before the cut-off, then?

A. No, the cut-off was in 1872.

Q. The cut-off was in 1876.

A. The Centennial cut off was made before I come over.

Q. You were not living there at the time the cut-off was made?

A. No, I was in Texas.

Q. Can you tell us when the boats quit running around the north side of 37?

57 A. No.

Q. Do you remember when they ran around the north side?

A. Yes, when we first went there to keep a wood-yard.

Q. That was on the north side of 37?

A. Old river goes up this way. The boats used to run that tow-head chute.

Q. This is old river, passes Shawnee. Do you remember when the boats used to run around there?

A. Yes.

Q. What year was that?

A. 1860.

Q. What time did they quit running around there?

A. I don't know. I left there.

Q. When did you go to Texas?

A. In 1869.

Q. Were they still running that chute?

A. I don't know.

Q. Was that the main channel in 1860?

A. They had two channels there in 1860.

Q. They ran on both sides of Island 37?

A. Yes, on both sides of Island 37, going through this way in time of high water.

Q. Up to five or six years before the cut-off it depended on the stage of the water as to whether they would use McKenzie Chute or use the old regular river?

A. Depended on the stage of the water. In high stages they went up around Island 37. There was swift water in here
58 along next to the bank, next to Mrs. Guffin's.

Q. Mrs. Ben Guffin?

A. No, V. C. Guffin, Ben Guffin is her nephew.

And further deponent saith not.

59 The next witness, CHAS. A. STOCKLEY, being first duly sworn, testified as follows:

Examination.

By Mr. Van Deventer:

Q. State your name, age, residence and occupation.

A. Chas. A. Stockley, residence, Corona, Tenn., farmer and merchant; 59 years of age in October.

Q. How long have you been living at that place?

A. Off and on all my life; I have been away from their about five years altogether.

Q. Are you familiar with the way the river ran before the cut-off, as well as after the cut-off?

A. I think so.

Q. Could you tell us how the river was run before the cut-off?

A. Before the cut-off the boats came up by what we called Bateman's landing and up around here and passed by Corona and around

by Devil's Elbow and up through McKenzie's Chute and out by Dean's Island; that was before the cut-off.

Q. How many timese have you run through there before the cut-off was made?

A. I couldn't say. I was about 15 years old when the cut-off was made; I had been there several times.

Q. Between what points?

A. Between Memphis and our landing, Stockley landing.

Q. Have you gone above to Pecan Point?

A. I don't know that I ever made a trip up in there.

60 Q. You don't know how the river ran from Pecan Point to your landing?

A. Only by looking up the river from our place. Centennial Island before the cut-off was called Devil's Elbow; the river went around this elbow and came back in that way and went up towards Pecan Point; in other words, where the river runs down stream now, it used to be up stream before the cut-off from the head of Centennial Island to Fogleman's Chute.

Q. As I understand it the river used to run around the lower part of this island that we are discussing—used to run around Brandywine Point and then down between the the main shore, and where that channel ran in at that time was over towards the east side?

A. You mean when the boats run in there before the cut-off, going up stream?

Q. Going up stream it was over on this side of the river, between Brandywine and the Tennessee shore?

A. Between Brandywine and the Tennessee shore, now the river runs down stream; before the cut-off it was up stream.

Q. You are talking about Centennial Island and Brandywine?

A. More on the right of Brandywine—it was——

Q. We are talking about the main channel of the river, between Brandywine and the main channel?

A. That was down stream going by Bateman.

Q. How did the boats run by that bank from Bateman's?

A. The channel was on the Tennessee side.

Q. Do you know how far from the bank the boats generally run?

61 A. I could not say.

Q. Between Brandywine and the Tennessee shore there was another island called 39, right at the foot of Brandywine?

A. I am not familiar with that 39; I always thought Brandywine and 39 were the same; it seems they were not though.

Q. Do you remember whether they ran on the east side of 39 at the foot of Brandywine?

A. I am pretty sure they did because the landings were on that side, on the east side of the river. Bateman is right below that bend.

Q. Do you know how the boats ran that channel around the lower part of the elbow, before they started to go around Brandywine?

A. Next to Island 37?

Q. No, I mean what is now Centennial Island.

A. The channel was over on, as we called it the north side of McKenzie.

Q. I was talking about how they ran around the elbow, the lower part of the elbow?

A. They hugged the Arkansas side going around Pacific place; the channel was on the Arkansas side from Pacific place down to the end of Devil's Elbow.

Q. Do you know when they began to swing over?

A. I expect about along by Pacific place. That was all caving bank in those days, is my recollection; the elbow there was a caving bank all along what is now Centennial Island?

Q. They swung over to the Tennessee side?

62 A. Yes, and hugged the bank as far as the end of the elbow, then came out to Fogleman's Chute; they passed Fogleman's Chute and came up around our landing, Stockley landing, then around Bateman's.

Q. They hugged the Tennessee side?

A. Going by Bateman's, yes. Ours was a caving bank, the channel was on our side.

Q. They hugged the Arkansas bank how far up—as far as Fogleman's Chute—in coming down river?

A. In going down the river they held to the Tennessee bank.

Q. I mean before the cut-off, coming this way to Pacific Place?

A. Coming down they would come this way and hug the Tennessee bank.

Q. How far would they continue to hug that bank?

A. I think they crossed over about the Pacific place, that is the channel swung across coming down. My recollection is that it was caving bank on Devil's Elbow side.

Q. You mean down old river below Golightly's?

A. Yes.

Cross-examination.

By Mr. Ewing:

Q. Mr. Stockley, you are familiar, of course, with Mr. Humphrey's map because it was used in your suit against W. A. Cissna.

A. Yes.

Q. You know the river ran by Dean's Island and struck the Tennessee bank right opposite Dean's Island, don't you?

A. Struck the Tennessee bank opposite Dean's Island, a little below, I think it was.

63 Q. In the early days it used to go around above Island 37?

A. I don't remember that far back.

Q. Do you remember when it run through Dean's Chute?

A. No.

Q. Do you remember when it run through McKenzie Chute?

A. Yes.

Q. There was an old road there on the bank by McKenzie Chute, wasn't there?

A. There was a road that run across the head of 37; that road is there now, the same road, but it is moved back some; that road run right here, across the head of Island 37. I suppose that must have been caving bank.

Q. You knew that McKenzie Chute ran from the head of 37 to the foot of 37?

A. Yes.

Q. You are familiar with the old road that was on the left bank of McKenzie Chute?

A. I don't think there was much of a road there before the cut-off, because that was cane brakes; if there was a road it wasn't anything more than a path. My recollection is there was no road on McKenzie Chute.

Q. The left bank of McKenzie Chute?

A. My recollection is if there was a road it was not much of a road, it was a path.

Q. To refresh your memory, I will ask you to look at your evidence which appears on page 79 of the transcript of the
64 record in the Supreme Court, in the case of Cissna vs. Tennessee, where this question appears: "Q. This old road was the left bank of the river in 1876, before the cut-off, coming down stream, was it not? A. I think it was." Do you remember that?

Q. I referred to that road that is right there now, and was then, going right across here from the head of McKenzie Chute on across the head of Island 37. That road has been there as long as I remember, but going this way on McKenzie Chute I don't remember any road; there might have been one. My recollection is it was cane br*eak* and woods, but I am not positive about the left bank going down stream.

Q. Do you recall the evidence that I have just read to you, given when it was more fresh in your memory?

A. I recall that, but I can see where I got myself mixed up; I was thinking of this road.

Q. Do you remember you had that map before you when you were testifying?

A. I possibly might have had, don't remember.

Q. You know where Island 37 is?

A. Yes.

Q. Do you remember this Trigg tract, 100 acre tract?

A. I remember the Trigg tract.

Q. Do you remember that the river was 1½ miles wide at the widest place in the river from the northeast corner of the Trigg tract?

A. From Island 37?

Q. Do you remember how wide the river was at the head
65 of 37, right across over at the head of 37?

A. It was pretty wide.

Q. Do you remember there was an old road—the one you testified about before—how wide from that old road to the opposite bank of the river, before the cut-off?

A. Across the northeast corner of 37?

Q. That is what I am trying to get at. Was not the river right there, before the cut-off, about a mile and a half wide?

A. It was pretty wide; it might have been a mile and a half.

Q. To refresh your memory, I will refer you to page 79 of your evidence in Stockley vs. Cissna, where this appears: "Q. What is the width from the road up there to the old bank of the river, prior to cut-off, across the northeast corner of 37?" A. "About a mile and a half." Do you remember that?

A. I expect that is right.

Q. The Tennessee bank at a point east of the lower end of Dean's Island was high and caving bank?

A. The Tennessee side was high and caving.

Q. And Dean's Island was growing out into the river?

A. Yes, I think it was.

Q. The boats in normal water stages, that is when it was not flood time and when it was not sunken by drought, the boats would hug the high bank, where the main channel was?

A. Yes.

Q. You were fifteen years old when this cut-off took place?

A. Fourteen or fifteen.

Q. Can you find Brandywine Bar on that map?

66 A. What we called Brandywine, according to my recollection, must have been right in there; Brandywine bar is right at the head of the upper bend, which made the narrow strip over which the cut-off came.

(The witness is referring to copy of map made by Maj. Suter, on page 815 of 119 Federal Reporter, in the case of Stockley vs. Cissna.)

Q. This map, to which your attention has been called, shows the river and land lines before the cut-off?

A. Yes.

Q. After the cut-off, in times of high water, the steamboats could still come up through McKenzie Chute?

A. Yes.

Q. But when the river was normal they used the main or new channel, and following the channel of the river went through what is called the cut-off?

A. Yes, they cut off twenty-five miles.

Q. In other words the distance saved is something like twenty-five miles?

A. Yes.

Q. As I understand it, the channel at the bottom of the map, marked in small letters "Fogleman's Chute," is now the main channel of the river?

A. Yes, it is now; Fogleman's Chute now is the main channel of the river.

Q. So then, Brandywine Bar and Brandywine Point are

67 now on the east side of the main channel, on the left bank of the present channel, coming down stream?

A. On the left bank of the main channel coming down stream.

Q. I notice on this map, at the bottom, a dotted line (which I assume indicates the main channel of the river), passes between a small island labeled "Island 39" and the large island called Brandywine.

A. I think Brandywine and Island 39 are joined together.

Q. I am asking you about it when this map was made.

A. I could not say. I was under the impression that Brandywine and Island 39 were joined together; still, they might not be. I was not familiar with that part.

Q. Do you remember how the pilots ran the river at that time, along here?

A. They came up by Bateman's landing, up around the bar, then by Devil's Elbow and then went up through McKenzie Chute.

Q. How long did you say you had lived on the river?

A. All my life.

Q. You have traveled it considerably?

A. Yes.

Q. Can you state as a general proposition whether the main channel of the river, going around Brandywine, takes the outside of the bend?

A. Takes the caving bank, you mean?

Q. Does the main channel take the outside of the bend or take the middle of the river?

A. I think the current always lies to the caving bank,
68 wherever there is a steep bank, the current is on that side.

Q. What we are trying to get at is, where there is a sharp bend in the river and there is a caving or high bank on one side, as against a sloping bank or receding bank on the opposite side, is it not true that the deep channel is next to the high bank?

A. Yes, the caving bank.

Q. And steamboats generally stay in the current coming down?

A. They stay in the current and hug the high bank in passing a bank.

Q. Coming down from Pecan Point the current struck the Tennessee shore at a point about here and followed the Tennessee shore around to where the cut-off was made and on down this way?

A. My recollection is the current came across from up there and struck the Tennessee shore; the river came around from Pecan Point up in there. It struck this bank. This was caving in some around here; and it struck here. This was caving on both sides, the upper and the lower sides of the cut-off.

Q. On the upper side of the cut-off how far did the steep bank extend?

A. A long ways down.

Q. Was it caving bank as far as McKenzie Chute?

A. Yes, I guess it was; I don't remember. This was caving bank. I know all the Tracy place, pretty nearly all, caved off.

Q. There is a house there in which a relative of yours lived, just north of your store, I believe, is there not?

A. William Stickley has a store there.

69 Q. Now?

A. Yes.

Q. Was that house standing there before the cut-off?

A. I don't think that house was, but my recollection is there was a house there, or about along there; it might have been that house, improved and fixed up.

Q. How near did the river come to that house before the cut off?

A. The house was away from the river before the cut-off; I could not say how far; I know it was a long distance; the river was away east and north east of that house.

Q. You couldn't say even approximately how far the river bank was from this house?

A. I could not say; I expect possibly it may be a mile or three-quarters of a mile, but I am not sure. I guess it was at least a mile and possibly more. That was all cleared land and caved in. The cut-off caved most of the land; it was caving before that.

Q. Allowing for the cut-off and the movements the river made in adjusting itself, how near did the caving come to that house?

A. The bank of the river is there now where it stopped.

Q. Where this steel bridge is?

A. No sir. Up to the bayou where the steel bridge is, that caved in after the cut-off.

Q. Up to this point where the bayou and steel bridge is?

A. Yes.

70 Q. The river caved up near that house after the cut-off?

A. Yes, the house was moved three times.

Q. How far has that house been moved from this place?

A. I expect it has been moved back about half a mile, maybe not quite that much.

Q. Since the cut-off?

A. Yes; when the cut-off first went through my recollection is we had about 250 acres of cleared land in front, pretty nearly all of that land was cleared when the cut-off went through.

Q. Do you know how boats ran by Shawnee Village?

A. No.

Q. Can you examine this map with reference to the various landings (the map appears on page 815 of 119 Fed. Reporter) and state how these landings are located now with reference to the river, how far from the bank? What is this opposite Dean's Island—is that Thomas' Landing?

A. Thomas' Landing, yes.

Q. Is that located there now?

A. I think they call that Corbett's, but I am not sure; I think Thomas' landing was right along where Corbett's is; it might be below or above. I think Thomas Landing was up there just above Island 36—Island 36 has been washed away or lost—Thomas' Landing is below Island 36; I think they call Thomas' Landing Corbett's now.

Q. How about Bateman's, is that practically in the same place with reference to the present channel of the river; have you

71 been there since the cut-off?

A. I was there 10 or 12 years ago. That is all made up, was at the time I was there; it was all filled up. I don't know, I think the landing is about the same place.

Q. Do you know whether the house is standing?

A. I don't know, I think the house was below; the old Bateman house was there.

Q. Is the old Bateman house the one indicated on the map?

A. I don't know whether it was the one located on the bank, whether it was close to the bank in those days I don't know; I was not familiar with that.

Q. Wtih reference to this old Morris place, are those buildings still standing?

A. Pacific place—the old Charley Morris house is standing, I am pretty sure. That is up on old river; that house is still standing, that is the one Golightly lived in, I think it is the same house.

Q. What is this place further up the river?

A. Viola Landing. This is Shawnee Village, this is McGavoc. This is Plum Island.

Q. Where is Barnay Bayou?

A. I don't know anything about that; all I know is I heard them talking about that; that is between Dean's Island and my landing. I have heard of Barnay Bayou but I am not familiar with it. All I know is there was a place they called——

Q. You never ran the river yourself?

72 A. Not up that way. I was clerk on the river below Memphis, but I never made up river trips—I did make one trip.

And further deponent saith not.

73 The next witness, WM. E. WRIGHT, being first duly sworn, testified as follows:

Examination.

By Mr. Barton:

Q. Please state your name, age, residence and occupation.

A. Wm. E. Wright, age 67, live at Corona, Tenn., and am in the grocery business.

Q. Mr. Wright, we are trying to find out how boats ran the Mississippi River, around Devil's Elbow, Brandywine and Dean's Island, from Pecan Point down to the foot of Brandywine. Please tell us how they used to run before the Centennial Cut-off.

A. They came down this bank opposite Dean's Island and then cut across there at about Mr. Cissna's house and went through that way. Coming down that bend they come through the Chute of 37 or McKenzie Chute. In ordinary water up to about 1872 they could go around by Shawnee Village.

Q. When did they begin running through McKenzie Chute regularly?

A. I don't know.

Q. How far above the head of the chute of 37 did the current strike the Tennessee bank—begin to be a steep bank?

A. I don't know exactly, not a half mile probably.

Q. It must have been more than a half mile.
A. I don't understand the question.
Q. I mean as the current came down from Pecan Point, in crossing from the Arkansas shore to the Tennessee shore, about what point did it hit the Tennessee shore—how far up did the steep bank run?

74 A. Somewhere about Mr. Cissna's. That sand bar used to extend away up, the sand bar on Dean's Island, that towhead.

Q. That sand bar below the Cissna place—did that stick out any further in the river there?
A. It stuck out further at Mr. Cissna's house, but now it is gone, it is dropped down.
Q. That used to be there at Cissna's house?
A. Yes, the head of it was right there.
A. When that channel ran on both sides of Island 37, which state was Island 37 in?
A. Supposed to be in Tennessee.
Q. So far as you know it has always been in Tennessee?
A. Yes.
Q. Even though the channel ran on both sides?
A. Yes.
Q. At the head of Dean's Island the channel begun to cross over to the Tennessee shore and hugged it close around to the Chute of 37 or McKenzie Chute?
A. Yes.
Q. This bank from the head of Dean's Island around this curve to McKenzie Chute or the Chute of 37 was high and caving bank?
A. Yes.
Q. The main channel of navigation was right against that bank?
A. Yes.
Q. This other side of Dean's Island was low and sloping bank?
A. Yes.
Q. Do you remember whether in 1870 up to 1872 the boats could go around Island 37 or though McKenzie Chute?

75 A. Yes.

Q. This is the way it ran before the cut-off?
A. Yes. At the time of the cut-off they run on either side; they went by Shawnee Village. At the foot of Dean's Island there is a bluff bank. They would run up in here and turn and come this way.
Q. This high bank on the Tennessee side continued all the way down to McKenzie Chute?
A. Yes.
Q. And the high bank continued beyond McKenzie chute?
A. Yes.
Q. And you have a store on the old river bank just below the head of McKenzie Chute—that is where your store is located?
A. Yes.
Q. You are right on the original bank of the river?
A. Yes.

Q. How far do boats run from the bank of the river there?

A. If you will notice there is another place they call Middle Lake. They run through that some time, but generally run on this side.

Q. They generally ran next to the high bank?

A. Yes.

Q. But they could go through Middle Lake?

A. Yes, sometimes they would go through Middle Lake.

Q. How far would they hug the bank in front of your store, how far up above your store?

A. They began to turn off, to make the crossing right here.

Q. In making the crossing they hit the high bank on the Arkansas shore?

76 A. Yes, sir.

Q. At about what point?

A. I don't know exactly, up above Osborn's probably half a mile.

Q. Do you know where the steel bridge is going from Mr. Stockley's?

A. Yes.

Q. This was at one time the river bank?

A. Yes. It caved since the cut-off at that point.

Q. Before the cut-off the bank was still further up?

A. Yes.

Q. That caved up to where that bayou is, up toward the steel bridge, in the commotion the cut-off caused?

A. Yes, and in 1882 it was still caving there.

Q. Are you familiar with the channel below there, after you left the chute of 37 coming down?

A. Not further than Mr. Scott's place.

Q. What about it down there?

A. It ran about like it does now on the Arkansas side.

Q. Is that old river?

A. Yes; it is no trouble to tell where the river was in 1876—and old river, it was right there where it is now. The boats ran the Arkansas bank here.

Q. They used to hug that bank there?

A. Yes.

Q. They used to hug the bank down there the same they *they* used to hug the bank on the Tennessee side opposite Dean's Island?

A. Yes.

Q. Right close to the bank?

A. Yes.

77 Q. Do you know where Mr. Stockley fords old river?

A. Yes.

Q. Have you used the ford?

A. Not lately.

Q. Do you know the fill between old river and the levee?

A. Yes.

Q. Was that fill made before or after the cut-off of 1876?

A. I think it built up since then.

Q. Might not that have been built up by the chute of 37; it might have been built before the cut-off, might it not?

A. Yes.

Q. Will you examine the dotted line on the map and tell us whether you think that approximately represents the course of the main channel of the river before the cut-off? You will notice that the dotted line there crosses over, and sometimes going down the middle of the river, and goes from side to side, and swings close to the bank around the bend and goes around McKenzie chute. Here is Pecan Point. You see the dotted line is nearly in the middle of the river opposite Pecan Point and then goes over near the Tennessee bank.

A. That is about the way it run.

Q. Now look at the line; this is Waller's opposite Pecan Point. This is Shawnee Village. You see how the dotted line runs. Do you think the dotted line approximately represents the main channel of the river?

A. Yes. I think so.

Q. Especially here, where you know it?

78 A. Yes.

Q. What about it at the point of Island 37? You see how it swings over from this point; it swings across the river almost right at the head of 37 and runs close to the shore of 37. Do you think that is correct?

A. That is about correct; it runs pretty close to the shore. This has washed off some at the north of 37 by the current coming through.

Q. Did you ever hear of a place called Mrs. Smith's at the head of 37?

A. Yes, that is the place we are on.

Q. Is the old house still standing?

A. Yes.

Q. The house she used to live in?

A. Yes.

Q. Located on that map?

A. Yes.

Q. Do you how far from the river bank in 1876?

A. May be one hundred and fifty or two hundred yards, I never paid much attention. It is washed back right up there now, a little ways from the house.

Q. In 1876 it was one hundred and fifty or two hundred yards?

A. It might have been or it might not have been that much.

Q. Could you tell how far the channel of the river was there from the bank?

79 A. Right along the bank. You can see where the channel of the river was.

Q. It was not over two hundred and fifty yards from the house?

A. I don't think it was.

And further deponent saith not.

Mr. Caruthers Ewing, Counsel for the State of Arkansas, thereupon introduced the following evidence which is to be found in Cissna vs. State of Tennessee:

80 Mr. Caruthers Ewing, counsel for the State of Arkansas, by consent, introduced the following evidence, which is to be found in the transcript in the case of W. A. Cissna, Plaintiff in Error, vs. State of Tennessee, Supreme Court of United States, October Term, 1916: E. E. Winslow (265-276), C. B. Bailey (276-294; 602-610), W. A. Cissna (297-305), W. W. West (306-309; 586-594), James A. Martin (542-556), Vince Beard (556-567), and Chas. R. Suter (610-637).

"E. E. WINSLOW, a witness for defendant (Cissna vs. Tenn.) being first duly sworn, testified as follows:

Direct examination by counsel for defendant:

Q. Please state your name to the Court.
A. Eben Everlin Winslow.
Q. In what business are you engaged?
A. Captain of engineers United States Army Corps, stationed at Memphis, in charge of the work of the Missouri River Commission for the first and second districts.
Q. Do you know where Dean's Island is?
A. Yes, sir.
Q. Is it in your district?
A. Yes, that is in my district.
Q. Now, Captain, I hand you this map and ask you in what year does this represent Dean's Island and the country around there, as it is shown here?

81 Defendant here introduced chart No. 18 of the survey of the Mississippi River made under the direction of the Mississippi River Commission.

(The clerk will here please insert it).

Counsel for plaintiff objects to this because it has not been identified or proven to be correct.

The court overruled the objection, to which counsel for the plaintiff excepted and asked that the exception be noted for record, which was by the court allowed.

A. It represents it in the various years in which this work was done.
Q. In what years was the work done?
A. In 1883 and 1884. In December, '83 and January '84.
Q. Commencing at Pecan Point, the river runs this way, does it not?
A. Yes, sir; it does.
Q. What do these figures represent that I see here?
A. These figures represent the depth of the water in the channel when the river was at 14.4 feet on the Fulton gauge.

Q. Upon what is the gauge at Memphis based?

A. The gauge at Memphis does not read exactly like the gauge at Fulton, their readings are not very far apart. What we call low water is 3.9 feet with a possible difference of two feet. At high water mark they are practically the same, within two or three feet.

Q. As to medium low or high water?

82 A. That would be below medium and yet not low water. Low water on the Fulton gauge is 3.9 feet, the difference between low water and high water I do not remember exactly, between thirty and forty feet.

Q. Commencing right here at the figure 220, what does that line represent?

A. That is what we call the 220 contour line, when the survey of the Mississippi River was made between Cincinnati, Memphis and New Orleans, they wanted to find the level of the gulf, but there had been no accurate surveys made to determine the level of the gulf and therefore they assumed that low water mark at Memphis was 190.84 feet above the gulf level. Now, when these maps were made these lines were drawn with a distance of five feet in elevation between them. A line drawn right here would be 220 feet above the gulf level and 30 feet above the gauge at Memphis. If the river stood about that line the contour line would be under the water.

Q. The next line is 225?

A. That line is five feet higher than the 220 line.

Q. This contour line appearing all the way and over here the figure represents that the line is five feet higher than the other, does it?

A. They are drawn five feet apart. By the lines you can tell approximately by reference to these lines the height of the bank above the Memphis gauge. This level here is 235 feet, that means that it is forty-five above zero on the Memphis gauge, but

83 there is slope from this point down to Memphis, so that you have to take out that slope in the river from forty-five feet, that approximately ten or twelve feet, so that line would — between thirty and thirty-five above the water surface at low water.

Q. Which bank is the high bank and which is the low bank?

A. Where the contour lines come far apart in measures that it takes that distance to make the five feet, therefore, the bank is almost straight up and down, so where these contours come pretty close together they show a steep and caving bank. When they are far apart there you find that the bank is very flat and probably sand bar or mud.

Q. Now, do you know what that represents in here?

A. That represents the river as it ran prior to the cut-off in 1876.

Q. Have you in your possession the original map drawn under authority of law of the river as it ran in the year 1874 around Dean's Island?

A. I have in my office lithographed maps made under direction of law and under the immediate direction of War Department of the river of 1874. I have that map from Cairo down below Vicksburg.

Q. I will ask you if this is a copy from your office?

A. I have the original in my office. This document that I have in my hands is public property and is, therefore, out of my possession. I have allowed this to go to the jury temporarily for the purpose of comparing.

84 Q. I will ask you to examine this copy and state whether this paper I hand you is a correct copy of the original which you have prepared?

At this point the counsel for plaintiff made an objection to the map going to the jury, because it is public property and cannot be put in evidence and filed in this cause.

The court overruled the objection and counsel for plaintiff excepted and asked that his exception be noted for record, which was accordingly done.

Witness continues:

A. That is the original; this map was printed in 1875, and is now out of print.

Q. Is this a part of the record of your office?

A. This is a part of the record of my office, it is furnished to the officers by the commission. It is a lithograph print from the original, it was issued about that time to the officers and engineers; they have need of it. It comes from the office of the commission.

At this point counsel objected to the introduction of the map because it is but a copy and its accuracy cannot be attested by the witness.

The Court overruled the objection, to which the plaintiff excepted and asked that this exception be made of the record which was allowed.

85 By the Court:

Q. Is this copy of the map on file in your office, the copy of the original?

A. That I cannot say. I know that there are a number of copies printed to be distributed among the officers having use for them, for I know of a number of officers having these maps. Where the original drafts are, I do not know. They are made for the purpose of study of the Mississippi River.

Q. Have you any present knowledge of the original?

A. None whatever.

Counsel for plaintiff objected to the introduction of the map for the reason that it was a copy of a copy which last copy had not been proven to be an accurate copy of the original, the witness saying that he had no knowledge on that subject.

Objection overruled by the court, to which plaintiff excepts and asks that his exception be noted of record, which is by the court allowed.

The defendant having introduced in evidence the map purporting to give the Mississippi in the neighborhood of Dean's Island as it was in 1874, and said to have been made by the government, it being the same map previously spoken of by the witness and to which plaintiff had noted his several exceptions.

(The clerk will please here insert it.)

Herewith attached to back of transcript.

Q. I will ask you to state what this dotted line represents.

86 A. That dotted line represents the channel of the river in the year 1874.

Q. Do you remember when the cut-off took place?

A. It took place in 1867. It is generally known as the Centennial cut-off, from which the island there took its name.

Q. Just state where the cut-off took place?

A. The cut-off took place approximately here (indicating on the map). My idea of the cut-off is this, the current comes against this bank, and by these two banks caving the river runs over and breaks through, then the river reversed itself here and the main river runs this way.

Q. Is the stream in the same place since the cut-off as before.

A. The map shows it so.

Q. I will ask you what this means. I notice dark coloring towards Dean's Island?

A. It is shading, the different shading represents sand bars, vegetation along the river.

Q. These things have fixed meanings?

A. Yes, they have fixed meanings.

Q. Will you please mark the cut-off of 1876?

A. (Here witness indicates the cut-off on the map.)

Q. Take that paper and state whether or not it is a correct copy of the original filed in your office, making the examination here in the presence of the jury and mark it Exhibit "A."

Counsel here renewed his former objections to this map, which were by the court overruled, and exceptions noted by the

87 plaintiff.

A. It is correct but there have been a number of blue lines put on it that are not on the original in my office.

Q. The blue lines to which you refer are certain blue pencil marks, are they what you had in mind?

A. Yes, I suppose so.

The witness here states to the court that the copy of the map which he has in hand is part of the record in his office and he cannot part with its possession, and asks the court to be allowed to withdraw it, which the court granted, and to which ruling plaintiff excepted and asked that his exceptions be noted of record, which was allowed.

Q. How long have you been engaged in your present profession?

A. I have been an officer in the corps of engineers for twelve

years. I have only been in Memphis three years. I took charge of this office informally in November, 1898.

Q. Has your business been such as to give you experience in noticing the caving of banks and the effect of flowing waters?

A. It has.

Q. I will ask you to state from the map of 1874, from Pecan Point just above Dean's Island to the southeast corner of 37 which is the caving bank and in which direction the river would go?

A. This map shows the caving in the left bank of the river on the Tennessee side, it shows that the bank was caving where the current struck against the bank. It does not follow that was
88 caving at any point below. Wherever you see a bend like this it shows that the bank is caving unless the curvature is too great.

Q. From this you would conclude it to be a fact that it was caving opposite Dean's Island and the island was following it?

A. As this bank was caving away the river would follow it to keep its channel within the limits it would follow up.

Q. Will you please, now, upon the copy of the map, draw the point of the cut-off in 1876, and describe it?

To which plaintiff excepts because the witness has shown that he has no knowledge of the facts as they transpired and there is no government record of the same, hence it would be mere speculations on his part to locate the cut-off.

The court overruled the objection, to which ruling the plaintiff excepted and asked that his exception be allowed, which was accordingly done.

A. (The witness draws on the map to indicate the point in question, and says these maps by comparison seem to show this island to be the same as that island.)

Q. What are the names of the two islands?

A. This is Brandywine Island on the large map is B—on the other map—This part of the river is the same on this map.

Q. What is that called?

A. It is not called by any name, by comparison of these two maps which are designated as A & B, it is approximately the same.
89 Q. Did you make that drawing of the cut-off by comparison of the maps after the cut-off and that of 1874?

A. I made that by comparison before and after the cut-off. I have been over the river here many times.

Q. Your drawing of the cut-off is made upon your knowledge and from a comparison of the maps before and after the cut-off, is that correct?

A. Yes sir.

Cross-examination by counsel for plaintiff:

Q. Were you present on March 7, 1876, when the cut-off occurred?

A. I was not.

Q. Your knowledge of the river at this place began when?

A. In December, three years ago.

Q. In other words, you had no knowledge of the river until 1898?

A. I had no knowledge except what is derived from the records.

Q. Then you had no personal knowledge.

A. No, I had no personal knowledge.

Q. The knowledge of the matter about which you have testified was derived from what purported to be records?

A. Yes, from the records and reports of the officers who have been engaged in the matters of the Mississippi River before the time as well as from the maps made by Humphreys and Albert.

Q. When was the Mississippi River Commission organized?

A. In 1879.

90 Q. Three years after the cut-off.

A. Yes, sir.

Q. Who made this map?

A. It was made under the authority of the chief engineer of the United States Army Corps.

Q. I will ask you if it is not a fact that no survey of the Mississippi was made between 1858 and that made since the Mississippi River commission was organized?

A. None except that in 1874 under the instructions of the Department of the Interior when a rapid survey was made of the river below St. Louis. This rapid survey is what we call a steam-boat reconnoisance. We embark on a steamboat and tie up at different places and make such observations as they think necessary. They then re-embark and proceed down the river a certain distance and tie up again.

Q. Do you know whether or not the survey made in 1874 was of that character?

A. Yes, that is what is called a statement reconnoisance.

Q. Does this map here show the minute details of the country, such as the land lines between the different owners along the bank?

A. No, it does now show any such things.

Q. Then, can you say that that was an accurate survey of that country?

A. It was not.

91 Q. Is it not a fact that it is a mere casual survey?

A. Yes, that is my understanding.

Q. The only accurate and authentic way of surveying is by actual measurement, is it not?

A. The question of accuracy is not a question of method and method is more or less inaccurate.

Q. Then all surveys are more or less inaccurate?

A. Yes, sir.

Q. Then, the reconnoissance which you have testified about must be less accurate than an actual survey?

A. Not necessarily for the purpose for which it was instituted.

Q. For what purpose and to obtain what information was that reconnoissance made?

A. It was taken for the purpose of studying the channel and location of islands.

Q. What was the purpose of learning the channel and does that purport to give that with accuracy so that a steamboat could follow it?

A. A steamboat could follow it with safety.

Q. Were any more made of it for the purpose of guiding steamboats?

A. No.

Q. A steamboat channel is shifting constantly, is it not?

A. But these channels shift regularly, following a fixed law any map as far as the channel is only good for the time it is made.

92 Q. You spoke of certain laws, what are these laws?

A. One of them is that a channel follows a caving bank.

Q. Being a member of the river commission, I will ask you if it would have been safe for the steamboats to have used that channel six months after the map was made?

A. Probably not absolutely.

Q. Then a steamboat would not have used that map?

A. It would probably not, its inaccuracy would increase with time.

Q. Before this map introduced here, which shows the steamboat channel by the dotted lines, I will ask you if it was made for the purpose of showing the steamboats the channel of the river?

A. No, it was made for the purpose of affording a preliminary study of the river.

Q. Did that survey purport to be an actual survey by chain and compass measurements?

A. It was not that kind of survey. It was, as I have said, a steamboat survey, by that I mean that a party of surveyors would embark on a steamboat, leave their boat at intervals and take such instruments and make such observations and measurements as they thought proper.

Q. Do you know whether any actual measurements were made?

A. I do not.

Q. I will ask you if the purpose of that map was not to show the general effect of the water?

93 A. No doubt it was.

Q. Did it intend in any way to give the channel at that time?

A. The line that was put on it was intended to show the channel of the river, that is the line of the deepest water.

Q. How do you know it was intended for that purpose?

A. Simply because it is marked in places "channel."

Q. Where is it marked on that map?

A. It is not marked on that map. It is marked on the index sheet.

Q. They are all drawn in that way?

A. I do not know.

Q. I believe as a matter of fact that pilots are required to serve three years before getting their license?

A. I know nothing about that.

Q. Don't you know that the United States Government requires a certain period of apprenticeship of pilots?

A. I know that there is some such regulation; the details I do not know.

Q. I will ask you if you do not employ a great number of pilots?

A. Not a great number, some.

Q. Do you not require a pilot license from the government?

A. No, we do not; not in every instance. As a general rule we do employ licensed pilots, but it is not required by the rules of our department.

Q. Does your office purport to give information as to the
94 channel of the river to boat men?

A. No, it does not.

Q. Could you now, from the information filed in your office, plat the steamboat channel from St. Louis to Memphis?

A. No, I could not.

Q. Then, so far as being able to show the channel of the river, your office is powerless?

A. Yes, it is in a general way.

Q. This is not the purpose of your office?

A. No, that is not its purpose; while it is not in the line of my duty to obtain it I may sometimes do so, but it is not our object to get such information.

Q. The information of which you would come into possession would not be of practical value, would it?

A. No, not of practical value except under certain conditions.

Q. You are a member of the St. Francis Levee Board?

A. No, I am a regular United States Army officer.

Q. When did you graduate at West Point?

A. In 1889.

(By the Court:) And he also graduated No. 1 in his class.

Q. How long after that before you went into the service of the Mississippi River Board?

A. My first practical work was in the fall of 1892.

Q. You have been connected with the Mississippi River
95 Commission three years?

A. Three years, that is all.

Q. Now, you have shown what lines indicate the bank of 1876?

A. Yes sir.

Q. How did you obtain the knowledge from which you drew these lines?

A. By comparison of the two maps and the information that I otherwise had.

Q. That is the survey of town- 10 and 9?

A. Yes, it was the same as this, only made on a reduced scale.

Q. What was the date of the survey from which this large map was made.

A. December, 1883.

Q. That was seven years after the Centennial cut-off?

A. It was.

Q. I will ask you if there has been any considerable changes there?

A. Yes, considerable changes.

Q. I will ask you if you knew the land lines of the different tracts at the place where the cut-off was made at the time of the cut-off?

A. I did not know them at that time, nor do I know them now.

Q. You had no knowledge of the situation of the Trigg place?

A. None whatever.

Q. Do you know whether the lines you have drawn were
96 on the Trigg or Massey place?

A. I do not know where the Trigg *or* Massey places are. I only knew the cut-off approximately.

Q. How do you know that that was correct?

A. I mean that I can state the way that this water crossed there and the way the cut-off took place. The places half a mile up or down the river I do not know about.

Q. What is the direction that you have given it?

A. General direction east and west, a little south of west.

Q. Northeast and southwest approximately?

A. Yes, sir.

Q. Do you mean to say that it did not cave up from the west, and south towards the east when it went through?

A. I do not know anything about the manner in which it went through.

Q. This survey was made seven years later?

A. It was.

Q. You have no knowledge except what you have obtained from this map?

A. From these two maps.

Q. These two maps then furnish the only information that you have as to how this cut-off took place?

A. Yes. I base my idea upon those maps and the formation of the banks here. Wherever you see a curving bank it is very likely to cave. Here we have a bend above and below, if both sides
97 constantly cave there must at some time come a period when they will join together and the river will go through. Then again by the course of the river it was much lower on the underside than it would be on the upper of the narrow neck until the water had risen so high as to cover the land entirely, therefore when the water first poured across this narrow neck it would naturally cave very rapidly.

Q. You do not mean to say that this was the caving bank of 1876?

A. I mean to say that from my knowledge of the Mississippi River and for other reasons that this point around here was at that time and for some time before and for some time afterwards was a caving bank and it might have been caving rapidly.

Q. You, of course, have no knowledge of that fact. Would not the caving depend upon the character of the soil and would not the caving there be affected by it?

A. Of course it would be affected largely by that.

Q. What is the fall of the Mississippi River to the mile at that place?

A. At this place I do not know, it is generally a half foot to a mile.

Q. Do you know the distance from this point here where you say the cut-off went through around the elbow here to the opposite side of the neck?

A. It is about fifteen miles.

98 Q. What would be the level of the river below as compared to that above across this neck?

A. Before it got out of its banks and covered its banks I would say the difference would be six or seven feet.

Q. In other words the level of the water above at that point is six or seven feet above that below at a given stage?

A. Yes, sir; it is.

Q. Would not cause the bank to cave very rapidly on the lower side where the water fell over it?

A. Possibly it might, and it might not, probably it would when the water first got out of the bank above and began to run over, that would depend entirely upon the character of the soil. That would continue until the river below had filled up to the level.

Q. I will ask you, Captain, in what state Island 37 is?

A. I am doubtful of that for this reason; We have a map in our office that shows that the main channel of the river at one time run between Island 37 and Arkansas, and I do not know what the laws are that govern such matters.

Q. Do you know what state this Brandywine Island is?

A. It is my impression that it is in Arkansas.

Q. Do you know in what state this Centennial Island is?

A. I believe that to be in Tennessee.

Q. What is the source of your knowledge?

A. It was simply joined to Tennessee land and the cut-off would not change it from one state to another.

99 Q. What is that line along there?

A. It marks the bank of the river.

Q. Does it not mark the bank of the river on the lower side of the neck before the cut-off?

A. It probably does along there, but this point may have been lower.

Q. Now will you draw on this map the north bank of the river here south of Corona before the cut-off?

A. Before the cut-off, the north bank of the river was probably down here, probably right there. (Here witness draws a line on the map.)

Q. On what scale is this map drawn?

A. On the scale of twenty thousand to the inch.

Q. That would be how many inches to the mile?

A. That would be a little less than four inches to the mile.

Q. Then will you take your pencil and measure four inches northeast from the line you have drawn as the north bank of the lower river before the cut-off?

A. Yes, it would be right here.

Q. Island 37 was left off the map, was it not?

A. Yes, sir.

Q. I will ask you if, in making this map, any actual measurement was made. Tell us how that is?

A. That map was made by measurements taken from the bench marks, base lines were run and the system of triangulation was applied so as to get the distance and fix the points necessary.

100 In getting these distances, an instrument called the stadimeter was used, by which the distance could have obtained accurately.

Q. Then you did not really run any of those lines by chains and compass?

A. No, but the same results were obtained.

Q. I believe you say you got at all the information that you have of this country from this map?

A. Yes, largely.

Q. What other record have you in your office?

A. We have the reports of the officers in charge of that part of the survey and the originals from which this map was taken.

Q. How was the bank measured?

A. By the observations taken from bench marks to bench marks.

Q. Do the Government officers attempt to measure the bank in detail?

A. No, they would simply locate different points and from observations draw in the immediate banks.

Q. Did they assume to take any actual measurements?

A. They did in regard to the bench marks and the principal points.

Q. Then the banks of that river are only approximately correct, are they not?

A. They are as correct as can be made in a case of this kind.

Q. I think you have given us all the information you have as to the Centennial cut-off?

101 A. Yes, I think so.

Q. Were you subpœnaed to testify in this case by the marshal?

A. No, sir.

Q. Do you not receive a fee for testifying?

A. I do not. I will state how I came to be here. I have in my office maps of the river at various dates; these are perfectly free for the public to examine. Mr. Ewing and two other gentlemen came into the office and looked at the maps. They asked where they could get copies of the maps and I told them. Mr. Smith came, too.

Q. Do you know the party in whose interest you are testifying?

A. I do not; he was not in my office.

Q. Do you know Mr. Cissna?

A. I remember seeing him once before; seeing in court here.

Q. Did he and Mr. Smith come to your office to examine maps?

A. Yes, that was the first time I ever saw him.

Q. What was the right bank of the river before the cut-off?

A. That is up here, I should judge.

Q. Now, if your idea is that this was the bank of the river in 1876, I will ask you where you think the river was running, and if it was accurately described on the other map?

A. The river went along in this way, following that island around.

Q. Will you please, so that the jury may understand, point out on this map the corresponding position on the other map?

102 A. This was made in 1874, that was probably changed by caving somewhere up there. I do not know for certainty.

Q. The map you marked here is simply the description of this bank and the river runs along this way?

A. Yes, sir; that part of it.

Q. Captain, have you anything else that would throw any light on the subject of that cut-off?

A. I have nothing except that map there.

Q. What was the purpose of making that 1874 map?

A. It was just a rapid map made to show the general course of the river at that time, it does not go back far; it was just to show the course of the river, the islands and the channel.

Q. Why is Island 37 not on this map?

A. The reason of it is this: The first survey party ended its season's work there and when the other began the next year they thought it had been made by the other party, and in this way it was left out.

Q. Do you know of your own knowledge that this map is an actual representation of the country there?

A. No sir.

Q. Its description can only be true for the time it was made, which was in 1883?

A. Of course it would only represent the ground at the time it was taken.

Q. And it does not purport to give the lines of the different tracts of land of individuals on the bank?

103 A. As I have said before, it does not.

Q. This map shows that a great many changes have taken place there, does it not?

A. It shows the parts of the bank that were caved away and the land that has been made in the old channel of the river since then, and the various other changes which took place there.

Q. When Mr. Ewing called you said Mr. Smith was with you. Was he a member of the firm of Caldwell & Smith?

A. Yes, I think so.

Q. Have you had any business or social relations with that firm or the members thereof?

A. Nothing, except that I am acquainted with them and Mr. Smith is a neighbor of mine.

Mr. Ewing: Is it not a fact that about all you know is that Mr. Smith lives within three or four doors of you on the same street and you have only ordinary acquaintance?

A. That is true."

(Cissna vs. State of Tenn., 265-276.)

(Testimony of C. B. Bailey Taken in Case of H. W. Stockley vs. W. A. Cissna and Used in Cissna vs. State of Tennessee Introduced by Mr. Caruthers Ewing, Counsel for State of Arkansas, as Evidence in This Case. See Cissna vs. Tenn., p-. 276-294.)

"C. C. (B) BAILEY, a witness for defendant, being first duly sworn, testified as follows:

Direct examination by counsel for defendant:

Q. Please state your name.

104 A. B. Bailey.

Q. Where do you live, Mr. Bailey?

A. At Wynne, Arkansas.

Q. What is your age?

A. Twenty-eight years.

Q. In what business are you engaged?

A. Surveying.

Q. Have you, as a surveyor, been employed by Mr. W. A. Cissna to survey Dean's Island and this country up there?

A. Yes, sir, I have.

Q. Have you been over it carefully?

A. Yes, sir.

Q. Are you familiar with the topography of that country?

A. Yes, sir.

Q. I will ask you if you have made any drawings in connection with your work of surveying up there?

A. I have.

Q. Is this a drawing that you made?

A. It is.

Defendant here offers map marked for identification "C. C. B. No. 1" and map marked "C. C. B. No. 2."

(The clerk will please here insert them.)

Q. From the survey of 1823 where did the river run in regard to Dean's Island?

A. This red line represents the red (?) bank at the time

105 the red (?) bank came down something like this.

Q. Where did you get the information from which you fixed this as the right bank of the river in 1823?

A. From the section corners.

Q. Does that correspond with the survey or plat I hand you marked "No. 2"?

A. Yes sir.

Q. Have you anything showing where the river ran in 1876, the right bank of the river?

A. Yes sir.

Q. Please point out to the jury.

A. This red line in here goes somewhere near it.

Q. What enabled you to say that this was the right bank of the river in 1876?

A. From the survey, the size of the timber and the difference in the soil.

Q. Now what would be the left bank of the river in 1876?

A. Very near to where this line is drawn here.

Q. This was the left bank in 1876?

A. Yes sir.

Q. Now what is this right here?

A. That represents McKenzie Chute?

Q. What is the character of the soil from this point where you have marked the right bank of the river in 1876, out that
106 way?

A. I should say that the timber on the right bank, as it is marked, is very much heavier than it is on the left bank.

Q. When were those surveys made?

A. November, 1901.

Q. What is the character of the soil of the right bank of the river in 1901, compared to what appears was the right bank in 1884?

A. A greater part of it is sand bar.

Q. Unless this was made then it appears that part of Dean's Island has washed away and the river has changed since 1876 over this way?

A. Yes sir.

(By Court:)

Q. Can you state from the government survey of 1823 whether or not Island 37 was in Tennessee or Arkansas?

A. If Island 37 had been in Arkansas it would show on that government map.

Q. Then Island 37 in 1823 was in Tennessee?

A. Yes sir.

Q. The river in 1823 ran right around this point?

A. Yes sir.

Q. What is the appearance of the timber right in here?

A. From this point in here there is a gradual change in the timber.

107 Q. Is it larger or smaller up there?

A. For the greater part the timber is smaller.

Q. Now, what does that represent?

A. That is a map I made of Dean's Island, part of 37 and part of Centennial Island.

Q. Where did you commence to make your survey?

A. In the corner of T. 10 N., R. 10 east.

Q. How did you find that corner?

A. I was informed by people living in the vicinity.

Q. Was there anything further to indicate the corner?

A. Yes, there is an iron pipe there about a half in. diameter.

Q. Is this map made from the survey of the tract of land in dispute?

A. Yes sir.

Q. It is an accurate survey based upon the records and run from corners given to you as fixed corners?

A. Yes sir.

Q. Where would you say was the right and left bank of the river in 1876 before the cut-off, according to the survey of that property?

A. These dotted lines here represent the right bank as I think.

Q. Where was the left bank in 1876?

A. Along here on the east side of Island 37.

Q. What do these black lines represent?

A. They represent the tract of land of 1,050 acres.

108 Q. Did you get the description of this tract of land from the declaration in this case?

A. I did.

Q. Then this land embraced in these remarks is the land described in the declaration in this case?

A. It is.

Q. What is this over here?

A. This is the smaller tract; I took it from the same declaration.

Q. Was this tract properly surveyed and marked on this map?

A. Yes sir.

Q. The Mississippi River is marked on this map as of what year?

A. 1901.

Q. Is this the correct representation of where the river is and the way it runs?

A. It is.

Q. How much of the land in dispute was on the left bank of the river in 1876, according to your survey?

A. I should say not more than twenty or thirty acres.

Q. Where was that situated?

A. Part of it here and another part on the east side of Centennial Island.

Q. Where is Sandy Chute?

A. I was told that this chute here went by the name of Sandy Chute.

109 Q. Is McKenzie Chute represented correctly on this map?

A. Yes, up to there.

Q. How does that represent where McKenzie Chute was the old 1876?

A. Yes sir.

Q. How did you ascertain that that was McKenzie Chute?

A. From what people say.

Q. Is that what it is generally called up in that country?

A. Yes, sir.

Q. Did you hear it called by the name of McKenzie Chute?

A. It seems to be generally known as McKenzie Chute.

Q. Can you tell from the topography of the country as to whether or not this land lying to the left of this right bank was in the bed of the river of 1876?

A. I should say that it was.

Q. Can you say where it was in 1823?

A. I should say that this part in here apparently was out of the water.

Q. This part of it over here was not in the river in 1823?

A. No sir.

Q. What kind of soil is this?

A. There is a large part of that over in here and also a strip there that is a sand bar, along in here it is covered with timber of different sizes.

110 Q. What do these dotted lines represent?

A. The right bank of 1823.

Q. Running this way?

A. Yes sir.

Q. What has gone with that land in here?

A. It has washed into the river.

Q. Can you tell how your map and survey corresponds with the survey of Mr. Humphreys as to the land in dispute?

A. This chute marked Sandy Chute, also what is marked as old river and what is marked as the present channel of the Mississippi River correspond.

Q. What have you where he has marked Sandy Chute?

A. I have it Towhead Chute.

Q. How is it generally known in that country; how was it called to you?

A. I was told that it was named Towhead Chute.

Q. Did you go along there recently?

A. Yes sir.

Q. What is the condition of the country where you stated to the jury was the left bank of the river in 1876?

A. The greater part of it was a bank from fifteen to twenty feet in height.

Q. Do these dotted lines represent the old bank?

A. These dotted lines that run along the east side of 37?

Q. Have you this old road on your map?

111 A. Yes, that is the road as it is used to-day.

Q. How close is that to the bank?

A. It is as close to the bank as it is possible to be and make good traveling.

Q. What kind of ground is this in here?

A. It is timber land except a small body in here.

Q. How is it along in here?

A. It is all timber.

Q. Now, in making the survey of this tract here, from what corner did you commence?

A. The corner of 26, 27, 33 and 34.

Q. How did you get this survey from there?

A. I connected to one point here, that was the northeast corner of Simon Huddleston's two thousand acre tract; then I ran this line and ran out here to the northeast corner of the Tripp 100 acre tract, connecting that with this, which shows line east to the corner.

Q. How many chains from this point here to that point there?
A. 133 chains.
Q. How many chains show here on the map? Can you look and see?
A. This does not correspond with this tract.
Q. Does it correspond with the declaration?
A. It does not.
Q. How many chains from point to point, as given in the survey of Maj. Humphreys?
112 A. 142 chains.
Q. How many chains are described in the declaration?
A. 133 chains.
Q. Now, did you go by any survey plats at any time through there?
A. Yes, when I ran this line I followed plat line.
Q. When were these plats made?
A. I should judge at the time the line was run, part of it had been carefully platted.
Q. Do you know who platted it?
A. No sir.
Q. Did you see Maj. Humphreys establishing line there at any time?
A. Yes sir.
Q. Who was present at the time?
A. Mr. Stockley and Mr. Joplin.
Q. Where was he at that time?
A. I cannot say exactly, I think it was right in here.
Q. What is the appearance of this land over here on Centennial Island, right at this chute?
A. It has the appearance of old land in cultivation.
Q. Did you and Maj. Humphreys start at the same place?
A. I had a stake pointed out to me, a wooden stake, which was recently put there, either this year or last.
Q. Which way did you go from there?
113 A. I ran this line here.
Q. You did not run this line here?
A. No, I only run two lines to tie onto my work.
Q. Did you run from any fixed point in running this line to locate the land in dispute?
A. Yes, sir.
Q. Was this accepted as Huddleston's corner?
A. I believe so.
Q. How does that correspond with the corner from which you started, is it not practically the same?
A. It appears to be from that map.
Q. Did you have this map when you were drawing yours?
A. No sir.
Q. Have you ever seen his until it was offered in evidence here?
A. No sir.
Q. I will ask you, assuming that the left bank of the river of 1876 on the Humphreys map is along here, and this road is on

top of that bank, does that correspond with the way you have it represented on this map; if not in what way does it differ?

A. The left bank, as I have it represented, comes down to right here.

Q. Well, now, what is this right in here?

A. That is what is called old river.

Q. Where did old river extend over this way, this being the left bank, how far this way?

A. Right here, possibly seventy-five or one hundred yards.

114 Q. From which side, right or left, is the filling in going on? So far as appearances indicate, state how the fact is?

A. It does not seem to have filled any from this side of Centennial Island.

Q. Why do you think this?

A. Well, judging from the growth of the timber.

Q. How does that bank compare with the left bank as to height?

A. It is very much higher; in some places this bank is practically up and down.

Q. I will ask you if there is any ridge there and a steep declivity?

A. Yes sir.

Q. Did you observe that on last Tuesday?

A. I did.

Q. I will ask you to state which is the low point of this bank in here?

A. This is very much lower here.

Q. What is this document?

A. That is the survey of Town 10 and 9.

Q. Was this document used by you in establishing this corner from which your survey commenced?

A. I did not establish that corner. I took it as it was.

115 Cross-examination by counsel for plaintiff:

Q. How long have you practiced surveying?

A. About ten or eleven years.

Q. Did you graduate in any school?

A. None except the high school.

Q. You did not study civil engineering or surveying in any school where it was taught especially?

A. No sir.

Q. Where did you get any knowledge of your profession?

A. By working with surveyors and engineers, with several different ones.

Q. Then you just picked it up?

A. Yes, sir.

Q. How far do you live from this place, Dean's Island?

A. Across the country about fifty-five miles.

Q. Then you do not live in the immediate neighborhood?

A. No, I was never there until Nov. 4th, 1901.

Q. Have you been there since?

A. Yes, on the 26th of November.

Q. How long did you stay there then?
A. From 25th to the 26th.
Q. Have you been there since?
A. No sir.
Q. Then you have never been there more than two or three days altogether?
116 A. No sir.
Q. Have you any personal knowledge of any land corners there?
A. Yes, sir, I have knowledge of one corner there.
Q. What corner is that?
A. That is the corner right here.
Q. How did you get that knowledge?
A. I saw a line running from it corresponding to a line described in the declaration.
Q. What corner is that?
A. Northeast corner of Simon Huddleston's tract.
Q. How did you get that corner?
A. I got it from the declaration.
Q. What declaration was that?
A. It was marked H. W. Stockley vs. W. A. Cissna.
Q. Who gave you this declaration?
A. Mr. Cissna.
Q. Who pointed out that corner to you?
A. I asked a darkey if he knew of any corner there and he showed me this one.
Q. What was the darkey's name?
A. I could not tell you.
Q. Did the darkey tell you it was Huddleston's northeast corner?
A. No, sir; he showed me a line in the woods
Q. Could you not draw any number of such lines?
117 A. Yes, sir.
Q. How did you know that this line was Huddleston's?
A. I saw that the distance agreed.
Q. Well, might not that line have been any other line?
A. I think not.
Q. You do not know that that was the northeast corner of the Huddleston tract?
A. Yes, sir, because I carried it to another corner described in the declaration.
Q. At what date did you say you ran that line?
A. In between the 6th and 9th of November.
Q. You have no other knowledge of the Huddleston tract except that you have gotten there, that you have just stated, have you?
A. None.
Q. You have no other knowledge of that fact?
A. That is all.
Q. Did you connect this line with your survey?
A. I connected with the line that I ran through the tow-head, I ran up old river on the south side of 37 and up the road on the east side of 37 to a point where this north line crosses it and then west, east until I struck my line.

Q. Now, what connection does that line have with this one up here?

A. I connected this point here with this point here by my
118 survey taken from the declaration.

Q. Did you run this line mentioned in the declaration?

A. I ran two of them.

Q. You say you saw Maj. Humphreys running some line there, did he run both lines?

A. One line, from this corner marked on this map west.

Q. Was that corner fixed there?

A. Yes, a wooden stake in the ground, I found it myself.

Q. Do you know whether that was the same Humphreys run?

A. It was run before I ran any line there.

Q. Is not this the line that you ran?

A. Yes sir.

Q. This second line that you found there, did the darkey show it to you?

A. No sir.

Q. Did you run that north and south line, and if not, why?

A. No, I did not; all that was necessary was for me to connect in two points, one would have been sufficient.

Q. Who pointed out this place here to you?

A. I do not remember his name.

Q. What place did he tell you it was?

A. He did not say.

Q. You then did not know what corner it was?

A. Only from the declaration.

Q. Did you measure that distance?

A. I measured it from here.

Q. You have stated that this was the Trigg place?

A. This is the northeast corner of the Trigg 100 acre tract.
119 Q. Does Mr. Trigg own that land?

A. I could not tell you.

Q. Does the declaration describe any particular point here?

A. It describes the northeast corner of the John Trigg tract.

Q. If you did not run these lines there, Mr. Bailey, how could you get at that point?

A. I found the corner here and run a survey from there to another corner described in the declaration.

Q. My understanding is that you ran a line down here in the woods so that you could identify it with the John Trigg corner?

A. Yes, sir, I did.

Q. You ran one line and concluded that the other line would run in the same place?

A. Because the intersection with that other line showed it to be the same, being the distance north and west from this line and also from my line here to make it the same, it shows that this must have been the corner.

Q. The correctness of it is a matter of chance, is it not?

A. There is not a chance in a million.

Q. You mean that you had one chance to get it right?

A. No sir; one chance that it was wrong.

Q. That you say was John Trigg's northeast corner?
A. Yes, sir, the northeast corner.
Q. You have stated that Maj. Humphreys was running 450 feet from this line?
120 A. From this corner.
Q. Which direction was it?
A. West.
Q. Now, you started from the same direction corner on Dean's Island?
A. From the corner of 27, 28, 33 and 34, T. 10 R. E.
Q. Who showed you that corner?
A. Mr. Cissna and Mr. West.
Q. How far was it to the river from there?
A. Between nine and ten hundred feet.
Q. Did you examine the bank along there as to its height?
A. I should say it was from eight to ten to one hundred feet.
Q. Do you know whether the bank has caved any since 1823?
A. I do not think it has changed any.
Q. Did you run that bank from 37 up to here?
A. Not up in here.
Q. I mean up here where the course is given here?
A. No sir, I did not.
Q. How did you get it?
A. By doubling on that course.
Q. You did not survey that bank, that is, you did not chain it?
A. No, sir.
Q. You do not know whether that same distance can be measured across there or not?
A. No, I do not know.
Q. Have you surveyed that line in controversy?
121 A. Yes sir.
Q. The line up here and up here?
A. No, sir, I did not.
Q. Did you run this line that you have marked here?
A. No sir.
Q. Did you run that line?
A. No sir.
Q. Did you run that line?
A. Yes sir.
Q. I mean did you chain it?
A. I chained it from my survey.
Q. Did you begin at any particular point?
A. No sir.
Q. Then you did not chain it, did you?
A. No sir.
Q. You have another blue line there. I will ask you what line that is, and if you chained it?
A. That is 78 chains south of this point here.
Q. What is the scale on which this map is drawn?
A. One to twenty thousand.
Q. Will you take your rule and see how far it is from that point here?

A. It is three quarters of a mile.

Q. You have that marked there 1876, what is that intended to indicate?

A. The right bank of the river at Dean's Island.

122 Q. How do you know that was Dean's Island bank of the river at that time?

A. Well, from the lay of the ground there.

Q. Why, may not that have been the bank of 1870 instead of 1876?

A. Because, in 1876 was the time the river made the cut-off.

Q. Who told you that?

A. I have read the history of it.

Q. What history? Riparian sands.

A. A book called "Reporters' Lines of the Mississippi."

Q. Did that book describe the bank of 1876?

A. No sir.

Q. And is it from that book you located the bank of 1876?

A. Not at all.

Q. What you saw there is all that goes to indicate that this was the bank of the river in 1876?

A. The timber here indicates that this is newer ground than this lying to the right, judging from the size of the timber.

Q. I will ask you if you did not find a great many willows there?

A. Yes, I noticed some willows.

Q. You have no knowledge except the size of the timber?

A. I inquired about it.

Q. Of whom did you inquire?

A. I inquired of Mr. Kenton.

Q. Was he an old resident?

A. I think so.

Q. Did he claim to have been there in 1876?

125 A. I think he did.

Q. Is it not a fact that Mr. Kenton came there recently?

A. I could not say.

Q. You do not know the source of his knowledge?

A. No, but I should say that he knew something about it.

Q. Did any one else tell you anything about it?

A. No, I think not.

Q. Did Mr. West show you the bank of 1876?

A. Mr. Kenton, Mr. West and myself were riding along there, but I don't think Mr. West said anything about it at the time.

Q. All your present knowledge was obtained from Mr. Kenton?

A. And from my own observation, the size of the timber.

Q. Did any one else tell you besides Mr. Kenton?

A. No sir.

Q. And you judged from the size of the timber?

A. Yes sir.

Q. What was the difference in the size of the timber on one side of that bank and the other?

A. I should say that beyond the curve to the right of that time the timber was forty inches, possibly a little more, four feet perhaps.

Q. Where are these trees located?
A. At several points in here.
Q. What sort of trees?
A. Cottonwood and gum.
Q. How far from this point here to this point here?
124 A. I did not measure to the trees; I measured for a line.
Q. You did not run this line?
A. No, I did not.
Q. Then, that is only an approximate line, and yet you have located these trees inside of that line, how far back were they?
A. I should say that these trees that I speak of were seventy yards back.
Q. You did not measure the distance?
A. No, I did not.
Q. You found these trees away up there?
A. Yes sir.
Q. Did you find forty inch trees down there, I am asking about right down here?
A. Let me explain a minute, I connected this red line right there by measurement, but did not run it through.
Q. You don't mean to say that you found forty inch trees down here?
A. Yes sir.
Q. They were right along here, these forty inch trees were?
A. Yes sir.
Q. Did you find any over here?
A. Not of that size.
Q. Now, you have these 40 inch trees on the made land?
A. Land that was made some time.
Q. I will ask you to look at this government map and see if you observe these tracings here?
A. I see the figures 235.
125 Q. What does that mean?
A. That 235 would call for about 30 feet on the Memphis gauge.
Q. That means that this land on this side of these figures 235 is higher or lower?
A. It is lower.
Q. How much lower?
A. About five feet lower.
Q. Is that in the center or near the line?
A. It is five feet between the lines.
Q. May it not in fact be five feet higher than the line you have made there, and may that have been the bank of 1876?
A. There is nothing to show it.
Q. Is there any difference in the size of the timber?
A. Yes, sir, it is four feet or over in here.
Q. Is there any marked difference in the growth of the timber east and west of that bank?
A. Yes, there is some difference.
Q. What was that difference?

A. I should say the timber is not larger than two feet in here.

Q. Then from 37 to here is covered with timber two feet in diameter.

A. Yes, in places there are trees of that size there.

Q. Now what is the size of the timber down here in the bed of 1876?

A. In here there is no timber whatever.

Q. What is that place there?

126 A. That is a salt knoll; there are saplings on it three or four inches in diameter.

Q. These are very small saplings are they not?

A. I should say they went from this up to fifteen inches in diameter.

Q. That is quite a marked difference in the size of these trees and these others up here?

A. Yes sir.

Q. I will ask you what is the reason of this difference in the size and growth of this timber, is it the quality of the soil?

A. It probably is.

Q. Is it not a matter of fact that trees on a barren sand bar do not get as large as those on good ground, in one place the timber is fifteen inches and another it is twenty-four; do you consider that difference in timber makes the old river bed?

A. I did not say that there was quite a difference in the size of the timber?

Q. You did not say that there was quite a difference in the size of the timber?

A. I did not say that.

Q. Did you trace that bank out?

A. Not all of it, perhaps some time I was a hundred yards from it; I have seen it from here to this point.

Q. Right near that Simon Huddleston corner, was all that level ground?

A. No, right over here is an elevation.

Q. Does that government map show that it is all the same

127 elevation?

A. It shows that there is some difference in here.

Q. That map was made in 1883, was there any bank there?

A. Yes, I think there was; I only had the lines drawn as far as I had seen it; I was asked to sketch it.

Q. The bank of 1876 may have come right around that way, may it not?

A. No, sir. I think not.

Q. Well, can you look at timber and tell the date of its birth?

A. I could by the different sizes get some idea of its age.

Q. Can you go out here in Court Square and tell the ages of those trees?

A. I would not say so.

Q. Would not the size of the tree depend upon the kind of soil and its fertility?

A. Yes, sir; I think so.

Q. Now, point out the spots where you found a perceptible bank?
A. There is quite a perceptible bank here.
Q. Did you take any measurement of it?
A. No, I did not take any measurement of it.
Q. Can you tell from your map, or get that other map, now give me the distance of the perceptibly marked bank?
A. At least one mile.
Q. Where did it begin?
A. Right along here.
Q. You do not mean to say that the distance from there down here is a mile?

A. Yes, sir; and then I rode around there at least a half
128 mile.

Q. Is that included in your first estimate?
A. Yes sir; I went over there because I did not follow it out.
Q. Then you do not know whether there is any bank along there?
A. No sir; I do not.
Q. But you do say that there is a bank right here?
A. Yes sir.
Q. If that bank was there in 1876, a perceptibly marked bank, why does the government map not show it?
A. I account for it in this way; the first of these surveys do not come until 1883.
Q. Then the government survey is wrong?
A. No sir, it is incomplete as to this point.
Q. Is it not a fact that these other lines show a definite bank along here?
A. They show no bank whatever.
Q. Do they show it level?
A. These maps were not run out.
Q. What did Capt. Winslow mean when he said there was five feet difference between these lines?
A. He meant that the ground within these lines was five feet higher.
Q. Does that apply to all the ground beyond there?
A. It would for the survey plat made from it.
Q. Capt. Winslow is wrong when he states that a plat survey of that country was made?

A. It is not complete.
129 Q. Your line is quite different from his, then?

A. His line represents a survey given about sea level.
Q. I notice little elevated spots here?
A. Yes sir.
Q. Was there any difference in the timber on them?
A. I could not say, possibly there was.
Q. If that bank is five feet higher there is considerable difference in the age of the timber on it, is there not?
A. Yes sir.
Q. Did you notice that an elevation of five feet made any difference?
A. I could only say that I was on the exact spot here.

Q. Then, you did not notice it?

A. No sir.

Q. Would you say that this spot here was an island in the river?

A. I do not know as to that spot.

Q. You think that the difference in the growth of the timber here indicates where the water left last?

A. Yes sir.

Q. You think that the mere growth of the timber indicates that the water covered this land later?

A. Yes, I should say so.

Q. How far is it from the south line of the land in controversy, the middle land right here claimed by Mr. Stockley, to the Mississippi River?

A. At the east corner one and a quarter miles; here at the end of Centennial Island it is a little over three-quarters of a mile.

130 Q. What sort of a country is it here between them?

A. It is woods and covered with heavy timber.

Q. Is any of it in cultivation?

A. Yes sir; there is a field there of about 100 acres.

Q. Has the river a well defined channel over there on the south where it is now with the usual bed and banks?

A. Yes, that is the main river over there. Its bed is plainly marked.

Q. I believe you said the land in controversy here is covered with a dense forest, the trees averaging between two and three feet in diameter.

A. Yes sir, and some of them are larger than that.

Q. You have stated, I believe, that the country indicated that the land accreted to this side, have you?

A. I should say so; yes, sir.

Q. Why do you say so?

A. Because against Centennial Island it does not seem to have changed.

Q. Now, did you run any other lines by actual measurement?

A. I think I have pointed them all out.

Q. Is this map as it shows McKenzie Chute correct?

A. Well, I think McKenzie Chute comes down in here.

Q. Now, you call that McKenzie Chute, that was the name by which you heard it called. I will ask you how you learned of this place in here?

A. I heard it spoken of by several different persons.

131 Q. Who were these?

A. Mr. Cissna, Mr. Kenton and Mr. West.

Q. Now, this land, as you have marked it is 37?

A. I only sketched this land.

Q. Does that red line purport to give a correct representation of the bank of 1823?

A. Not except at this point there, that is all.

Witness excused.

Redirect examination by counsel for defendant:

Q. Now, Mr. Bailey, measure and tell me the distance from this point right here on Dean's Island in 1823?

A. Two and one half miles.

Q. Now, from corresponding points here what was the distance in 1874?

A. Three and five-eighths miles.

Q. I will ask you to measure from that point here on Dean's Island to the Mississippi River as it existed in 1823 and tell me the distance?

A. One mile.

Q. Now, how far is it from the Mississippi River from the Government survey in 1874?

A. Two miles.

Q. Now, take map No. 7 and tell me the width of the river at the head of Dean's Island as it existed in 1874?

132 A. Right there one half mile wide.

Q. How wide is McKenzie Chute, as represented on your map No. 7?

A. A little more than one-fourth of a mile.

By the Court:

Q. Mr. Bailey, can you mark on Map No. 7 the land described in this declaration of Mr. McSpadden?

By counsel:

Q. Can you take the map of 1874, No. 7, showing Dean's Island and the course of the river at that time and mark upon the map the property described in the declaration filed in this case?

A. I think I can. (Proceeds to do so by reference to the map).

Q. Have you marked upon map No. 7 the property in dispute?

A. Yes sir.

Q. Have you designated the large tract by red lines and the smaller tract by blue lines?

A. Yes sir.

Q. Have you accurately marked it on the map of 1874, No. 7?

A. Yes sir; within the limit of the lines that include it.

Q. Now, Mr. Bailey, I will ask you if to-night you will draw on one piece of paper the river of 1823, according to the government survey, and on the same piece of paper the river of 1874, 1879 and 1880?

A. Yes sir, I can.

Q. I want to ask the witness to draw on one piece of paper for convenience sake the river at these various dates showing Dean's Island, as shown by the government survey?

—. ——.

Q. Now Mr. Bailey, I will ask you if you have drawn the
133 original Dean's Island and the river in 1823, as taken from the certified copy of the Government survey and also from

the same scale Dean's Island and the river in 1874 according to the scale of the river of 1879 and 1880?

A. Yes sir, I have.

Q. Have you done so accurately and carefully?

A. Yes sir.

Q. Have you designated upon the map of 1823 where the land in controversy was situated?

A. Yes sir, I have.

Q. Will you explain to the jury what these lines right here represent?

A. These lines right here represent the larger tract described in the declaration.

Q. It appears that at this time this property in controversy was on the left bank of the Mississippi River?

A. Yes sir.

Q. It appears that part of this tract here was in the river at that time?

A. Yes sir.

Q. I will ask you if you have compared these maps with the survey of Maj. Humphreys to ascertain whether this property is situated on his exactly as you have it here with regard to the original river of 1823?

A. Yes sir, it is.

Q. Is the channel between the banks of 1823 and 1874 perceptibly different?

134 A. It shows a difference east and west, also where the river runs directly west. The river was moved south 66 chains and the width of the island has increased between the two dates.

Q. Now, Mr. Bailey, as to how many measurements you run, you stated that you ran two lines, was it necessary for you to run more than two lines?

A. No, it was not necessary only a check to my own work.

Q. Will you state if you ever saw this map until it was introduced in evidence?

A. I did not.

Q. Is there any way by which your survey could be wrong?

A. No sir, I think not.

By the Court:

Q. Mr. Bailey, if I understand Maj. Humphrey's map, these section lines represent the section lines in the Government survey?

A. Yes sir.

Q. In running out this Government line when you made this map, did it come to the right bank of the river as it existed in '76 and does it correspond with the lines of the Humphrey's map?

A. They correspond exactly.

Q. How about these lines on Dean's Island?

A. They do not correspond at all.

Q. How about the section lines as run from Dean's Island in 1823 with regard to the river of 1874?

A. They do not correspond, at this point here the river bank in 1874 was 96 chains further west than it was in 1823, one and one-fifth miles.

135 Q. Can you designate by section lines where that point is?

A. It is the line between 32 T. 10 and the line between 32 T. 9 R. 10, when it changed west it would take 96 chains more to get to the river in 1874 than it did to get to the river in 1823.

(By the Court:) Are there any other lines on this map, give us all the lines.

A. If the line between 4 and 5 in T. — N. R. east was continued south to the river of 1874 it would have to go 58 chains further than it did in 1823. If the line between Sections 3 and 4 T. R. N. R. 10 E. was continued south to the river of 1874 it would have to go 32 chains further than it did in 1823. If the line between Sections 27 and 34 T. 10 N./R. Do (?) E. was continued east to the river of 1874 it would be practically the same as it was in 1823. This right line here between Sec. 34 R. 10 N. 10 E. if continued east to the river of 1874 would also be practically the same as in 1823.

A. You mean that commencing right here going down the river this line and this one are practically the same, but on this side the difference is as you have stated?

A. Yes sir.

Recross-examination by counsel for plaintiff:

Q. Will you please draw Huddleston's east line from this government map of 1874 and state what is the distance?

A. Seventy-eight chains.

Q. Now, draw his south line 200 chains due west.

A. (Witness here draws the line as requested).

Q. Now extend his west line 114 chains due north?

A. (Witness does as requested).

Q. You have drawn these lines as accurately as you could?

A. With this instrument, yes sir.

136 Q. Then, this is your idea of how the Huddleston tract lay in 1874?

A. Yes sir.

Q. And this is done as accurately as you have platted the rest?

A. Yes sir.

Q. Tell us by what process you fixed these lines on the Arkansas shore and the Tennessee shore?

A. From the corner of sections 27, 28, 33 and 34.

Q. Now, did you get these lines from here?

A. I reduced them from this larger map.

Q. Starting from this point, did you have any original surveys from the Tenneessee shore?

A. No, I had nothing but the copy of the declaration.

Q. Your work, then, does not purport to be correct so far as it runs the Tennessee bank, does it?

A. Yes sir.

Q. How did you get this?
A. From this map
Q. That is how you got the Tennessee shore?
A. Yes sir.
Q. How did you get these lines up here?
A. From the northeast corner of the Huddleston tract and from the northeast corner of the Huddleston 100 acre tract.
Q. How did you find the relationship between these two points?
A. By running from the corner of 27, 28, 33 and 34.
Q. If you are mistaken as to the northeast corner of the Huddleston tract your whole work is wrong, is it not?
A. Yes sir, it is wrong.

137 Q. Now, Mr. Bailey, this line of 1876, I believe you stated that down in here was as far as you run?
A. Yes, sir.
Q. Then, you have no knowledge of how it went after that?
A. None at all.
Q. Mr. Bailey, I will ask you as to whether or not that country is covered with timber?
A. Yes sir, it is.
Q. I will ask you in making your surveys in Tennessee you used any Tennessee records?
A. Nothing except the description that I spoke of in the declaration.
Q. Have you ever examined the records in Tipton County?
A. Not at all.
Q. I will ask you if you used this survey in making any of your maps?
A. I did not.
Q. You had no knowledge of it?
A. None at all.
Q. Now, Mr. Bailey, in drawing this channel of the river of 1876, I will ask you if you accepted the present bank of Centennial Island as the true bank?
A. I did.
Q. Then, if you are mistaken in this your map is wrong?
A. Yes, to a certain extent.
Q. If, in fact, that bank should be a little over in here it is to that extent wrong?
A. Yes sir.

138 The witness at the request of the court drew a map from the Government map in evidence, maps showing the Arkansas side of the river in 1823, 1874, 1883, etc. (Here copy it). Witness excused."

Cissna vs. State of Tennessee, 276-294.

(*Testimony of W. A. Cissna Taken in H. W. Stockley vs. W. A. Cissna, Used in Cissna vs. State of Tennessee, and Introduced by Mr. Caruthers Ewing as Evidence in This Case. See Cissna vs. State of Tennessee,* 297-305.)

W. A. CISSNA, defendant in this case (Stockley vs. Cissna), being first duly sworn testified as follows:

Direct examination by counsel for defendant:

Q. Please state your name to the court.
A. W. A. Cissna.
Q. Are you the defendant in this lawsuit?
A. Yes sir.
Q. Where do you live, Mr. Cissna?
A. Chicago, Illinois.
Q. Who is in possession of that property on Dean's Island?
A. I am.
Q. Who is in charge of the island?
A. Mr. West is manager for me there.
Q. Do you know what is called old river?
A. Yes sir.
Q. What is now designated by the inhabitants as old river?
A. The old bed of the river between Centennial Island and Dean's Island and Island 37 and Dean's Island.
Q. How many old rivers are there?
139 A. I never heard of but one.
Q. By old river is meant, as the term suggests, the place where the river ran in 1876 prior to the change made by the cut-off?
A. Yes sir.
Q. Do you know about the McKenzie Chute?
A. Yes sir.
Q. Where does it lie?
A. Between Island 37 and Centennial Island.
Q. It is generally known as McKenzie Chute, this place between Island 37 and Centennial Island?
A. Yes sir.
Q. Is it known by any other name than that?
A. Not that I know of.
Q. Here is a chute between Dean's Island and the main shore of Arkansas, what is that called?
A. Dean's Chute or Barger's chute.
Q. Did you have a conversation with Mr. Stockley prior to the bringing of this suit as to where his boundary line was?
A. Yes sir.
Q. How did you talk with him?
A. Mr. Kent was present and did some of the talking for us, and sometimes we used a pencil and wrote. They came up to see me and said they wanted to show me the line.
Q. When was this?

A. I think it was about a year after I purchased the property there in 1899 or 1900; I think it was in the fall of 1899.

140 Q. Did he claim the property that he now sues for?

A. No sir, not as I understand it.

Q. Can you tell us where he said was the line of that time?

A. Yes sir.

Q. Please tell the jury so they can understand it.

A. Mr. Kenton and Mr. Stockley came to the house where I was and said he would like to show me the line; we took our horses and rode down to a stake which Mr. Stockley said was the line. He took the lead and rode down through the woods. Kenton did the talking; after we got to the woods Kenton took the lead and did the talking for us, most of it.

Q. Where was that property; that line?

A. It was on the left side or lower side of Dean's Island.

Q. Where was that line he showed you with regard to the river—old river?

A. It was what I suppose he called the middle of the channel of 1876.

Q. Is that practically the same as the property for which he sues in so far as the line which was run by Maj. Humphreys and Mr. Stockley and Capt. Joplin blazed the woods through there?

A. Not so far west, I should think, by a half or three-quarters of a mile.

Q. Now, Mr. Cissna, did you see Maj. Humphreys and Capt. Joplin and Mr. Stockley in the woods there Tuesday before last, and did you not trace them by the blazes they made running the line

141 through the woods?

A. I don't think I saw Maj. Humphreys.

Q. Was not this line being blazed a half or three-quarters of a mile—to the right than Mr. Stockley claimed when he pointed it out to you in 1899?

A. Yes sir.

Q. Have you had occasion to go over the island and examine the bed of the old river?

A. ——.

Q. Was the line as being blazed by Maj. Hunphreys 1876?

A. I do not think so.

Q. How would it be as to the right bank of the river of 1876?

A. It would be much further east.

Q. How much?

A. I should say a half mile or something like that.

Q. Have you ever measured it?

A. No, it is just a guess.

Q. What is the width of old river up there?

A. About ¾ mile.

Q. Is the bed of old river grown up in timber?

A. Yes sir.

Q. From which side does the timber grow?

A. The larger timber is on the right side going down stream, the Arkansas side.

Q. Now, what is the nature of the left bank of 1876 of old river?
A. A decided bank.
142 Q. Is it a bluff bank as compared with the other bank?
A. Yes sir.
Q. When you went there with Mr. Stockley did he point out what he claimed to be the sarting point at his line?
A. In 1899, no sir; he did not point out the upper end of it; we rode down the river to the road.
Q. Did he at any time?
A. Yes sir.
Q. When was that?
A. In September this year. Mrs. Stockley was with him, but she did not go down to the stake.
Q. What was the nature of that stake?
A. Just a regular stake driven in the ground.
Q. A wooden stake?
A. Yes sir; a wooden stake.
Q. How did that correspond with the claim he had heretofore made?
A. It was very much further east.
Q. Were you with Mr. Bailey, at the time the survey was made?
A. Yes sir.
Q. Did you point out to Mr. Bailey the corner as claimed by Mr. Stockley?
A. I was with him at the time, I don't know whether I pointed it out to him, we were there together.
Q. You were at the wooden stake that Mr. Stockley had pointed out to you as his corner?
A. Yes sir, the same corner.
143 Q. Do you know whether that is the Huddleston corner or not?
A. I only know from the representations of the map it is the same corner.
Q. The corner as represented on the map?
A. It is the corner that Mr. Stockley took me to.
Q. On the Humphrey map where is that corner?
A. I do not know where it is on this map.
Q. But it is the corner that Mr. Stockley pointed out to you?
A. Yes, sir; in September of this year.
Q. What was the name of the negro that you and Mr. Bailey saw and talked to down there?
A. I can not say exactly, it was something like Hight.
Q. How old was he?
A. I should say thirty or thirty-five years old.
Q. What was he doing there?
A. He seemed to be hunting.
Q. How close were you to the corner?
A. We were just on the lower side of the chute?
Q. Did the negro go with you to the corner?
A. Yes sir.

Q. Mr. Cissna, I will ask you to state what was the average size of the cottonwood timber on old river?

A. Well, near Powell's Lake there were small willows and cottonwood trees.

Q. Where is this Powell lake with regard to the left bank
144 of old river?

A. Right next to the shore; the Tennessee side.

Q. Powell's Lake lies right along the bank?

A. Yes, sir.

Q. What is the distance between the banks of the old river there?

A. I should think ¾ of a mile.

Q. Now, what is the size of the timber in the bed of the old river?

A. The willows, I should say, are six inches to one foot.

Q. How about the cottonwood?

A. Probably two feet to two and a half feet.

Q. Have you had any experience in timber and are you familiar with the growth of trees?

A. I have never dealt in timber other than selling the timber on this property.

Q. Do you know anything as to the growth of the cottonwood on this property?

A. My observation is that the young trees grow up very rapidly to two or three feet in diameter and after that they do not grow so fast.

Q. How is the timber on the Arkansas bank of the old river between the main land and the original Dean's Island?

A. The timber is some smaller next to the river.

Q. How is it in the old bed of the river?

A. Much larger.

Q. That timber on the right bank of 1876 is larger than
145 the timber in the bed?

A. Yes sir.

Q. What age does that timber indicate?

A. Well, I don't know; it is good large timber from three to four feet thick.

Q. How close is it to the right bank.

A. It is very near to it.

Q. From that right bank how far does the timber land run before it strikes any made land?

A. I should say three-quarters of a mile.

Q. Mr. Cissna, how much cleared land there, exclusive of that you own?

At this point plaintiff objected to witness asserting any ownership in land because he had *deraigned* no title.

Objection overruled by the court and exception noted.

A. About sixty acres.

Q. How much cleared land is there over there?

A. About eight hundred and twenty-five acres.

Q. From the condition of the land can you tell us whether the clearing is of recent date or whether it is old cleared land?
A. I should say it had been cleared many years.
Q. It appears to be old cleared land?
A. Yes sir.
Q. Dean's Island appears upon the government map in this form. I will ask you to examine it, please, and state if the island as it now exists approached to the river at this place?
146 A. No sir.
Q. What is the condition of the island from the head of it here to about this point, with regard to where the river runs?
A. I have only owned it since 1896; it has accreted many acres since I have owned it.

Plaintiff again objected to any statements of ownership from the witness.
Objection overruled by the court; exception noted by the plaintiff.

Cross-examination by counsel for plaintiff.

Q. Mr. Cissna, are you a timber expert?
A. No sir.
Q. You have stated that they grow at a certain rate up to two feet and then do not grow so fast; how did you find this out?
A. By observation and talking with timber men.
Q. There is a difference after they reach two feet?
A. Yes sir; they do not grow so fast after they reach a certain size and age as when they are young.
Q. After it gets two feet can you tell how fast it grows?
A. Only in a general way.
Q. Can you form any estimate of the age of a tree four feet thick?
A. No, only in a general way.
Q. Tell us what you mean by general way.
A. Just the appearance of the tree.
Q. Take trees four feet thick, how old would you suppose
147 them to be?
A. It would be pretty hard for me to say.
Q. Would you say less than seventy years old?
A. I would think so, yes sir.
Q. How much less than seventy?
A. Probably fifty years old?
Q. Now, you have spoken of a tree getting two feet thick in a certain length of time and after that they grow more slowly, the difference between two feet and four feet is two feet, and these trees are four feet thick and fifty years old, that is not much difference in the rate of growth is it?
A. All I know about that is from my own observation and I have also been told by timber men, Mr. Gibson and others, that after a tree gets large size they do not grow so fast.
Q. Then these trees may have been seventy-five or a hundred years old?
A. Yes sir; they might have been.

Q. These trees grew there since the water left that land, since 1823.

A. I do not know about that.

Q. You do not know whether they grew there since 1823 or not?

A. No sir; the large trees extend away up into the woods, near the house.

Q. Are there any four foot trees in the made land?

A. No sir; I do not think there are.

Q. Now, do you mean to say that you did not point out
148 that Huddleston northeast corner to Mr. Bailey?

A. I pointed out the stake that Mr. Stockley showed me.

Q. Did you carry Mr. Bailey to that point?

A. I had to take the horses and go around and when I got there the darkey, Mr. Bailey and Mr. West were at the stake.

Q. Did you tell Mr. Bailey that that was the corner?

A. I told him that Mr. Stockley showed me the stake.

Q. Did you show that to Mr. Bailey?

A. Nothing more than that I was there; I was probably not in ten feet of the stake.

Q. Mr. Bailey knew that you had gone to the stake?

A. He was at the stake himself.

Q. You gave Mr. Bailey the declaration from which he ran those lines, did you?

A. It was in the hands of my attorneys.

Q. At the time Mr. Stockley showed you this corner, was it your purpose to have the survey made?

A. Yes sir: I expected to have it surveyed.

(By the Court:) Was the corner that the colored man showed Mr. Bailey the same corner that Mr. Stockley showed you?

A. Yes, sir; the same corner.

Q. You have stated that you did not know the location of the right bank of the river in 1823?

A. Nothing more than what is on the map.

Q. Where is it in reference to the right bank of the river in 1876?

149 A. Very much further east.

Q. How much further?

A. Well, I should think a half mile.

Q. How far is the house where you live from the right bank of the old river?

A. I should think probably three miles.

Q. How far is it to the bank of '76?

A. About half a mile.

Q. Were you living in that country in 1876?

A. No sir.

Q. You have lived there in recent years?

A. Yes sir.

Q. Would it be possible to locate the banks of the river of 18*we*(?) from the vegetation growing, the size of the trunks etc.?

A. I think the right bank can be located; it is very perceptible; I have never examined the left bank particularly.

Q. How about the river of 1876?
A. I think that can be located very easily.
Q. Is there a high ridge of land on the north bank of Sandy chute?
A. Yes sir, I think about ten feet high.
Q. That is about as high as the made land?
A. Yes, sir, I think so; the bank runs down Sandy chute.
Q. Does it run due east and west?
A. I think it is east and west.
Q. That does not indicate any bank of 1876 or 1823 of
150 the Mississippi River, does it?
A. It represents the bank as it now is.
Q. You do not mean to say that the bank of Sandy chute is the bank of 1876, do you?
A. I do not know anything about it.
Q. Suppose you are right in your contention on the location of the bank of 1876, would this bank along Sandy chute be right in your river?
A. Part of it would; yes sir.
Q. You do not think this bank has any significance as to the bank of 1876?
A. No sir.
Q. Did Mr. Kenton ever point out to you the bank of 1876?
A. Yes sir.
Q. Had you found it before that time?
A. I had not followed it down to where he showed me.
Q. Now, I believe, Mr. Kenton was the man who pointed out this bank of 1876 to you?
A. Yes, sir; the lower part of it.
Q. Can you take this map and show where you located the bank before Mr. Kenton showed you?
A. Right in here. I had been all the way down.
Q. And Mr. Kenton showed it to you down here?
A. Yes sir.
Q. Is it higher than this bank in here?
A. I suppose two or three feet, some places a little lower
151 than others.
Q. This is the bank along here, eight or ten feet high?
A. Yes, sir; in places it is almost even with Sandy chute bank; other places you can ride down it.
Q. That bank agrees with the river of 1876?
A. Yes sir.
Q. Mr. Cissna, you spoke something of a conversation with Mr. Stockley several years ago in which he showed you the extent of his claim; when was that?
A. In the fall of 1899.
Q. What was the subject of that conversation?
A. Mr. Stockley and Mr. Kenton came riding horseback to the field where I was and said he wanted to show me where the lines were—we went riding down into the woods to the point he claimed was his property at that time. I asked him to go in front and show

me what he claimed. Mr. Kenton took the lead down through the woods and did the talking.

Q. Was the conversation carried on by the finger language?

A. Partly and partly by writing.

Q. Was there any line there?

A. Nothing more than the road down through the woods.

Q. As a matter of fact wasn't he merely showing you this old line that washed away?

A. He was showing me where his line came to?

Q. You, of course, rode where you found the best riding?

A. Well, I don't know.

152 Q. I believe you have fenced in the land in controversy, have you?

A. Yes sir.

Q. Show us now where the fence runs?

A. It runs right along here and on around here down to something like this right here (indicating it on the map).

Q. When did you put that fence there?

A. This last spring.

Q. Does Mr. Stockley claim to be in possession of the 230 acres?

A. Part of it only.

Q. In your conversation with Mr. Stockley, you were riding through the woods, were you not?

A. Yes, we would stop at different places.

Q. How long had you been acquainted with him at that time?

A. I think I had known him a year or more.

Q. Do you see him frequently?

A. Yes sir.

Q. Can you understand his conversation easily?

A. Yes, sir, pretty well.

Q. Can you understand him riding through the woods?

A. About as well as I can anywhere else.

Redirect examination by counsel for defendant:

Q. Did Mr. Stockley wait until he got into thick places to talk?

A. We stopped at different places.

Q. At a certain distance from your house, northwest from your house, across this island you come to a place where there is a

153 steep declivity?

A. Yes sir.

Q. What kind of soil is that?

A. It is a black, rich loam.

Q. From that place to the present river how is it, inclined or level?

A. It is level.

Q. Going from there to the right bank of the river as it now exists, what kind of land do you pass over?

A. Very good land.

Q. Is it land that has the appearance of made land?

A. Yes sir.

Q. What is the first marked depression that you find?

A. The right bank of 1823.

Q. Going from the right bank of 23 to the present river you strike field and then woods?

A. Yes sir.

Q. How far is it from the right bank of 23 to the right bank of 76?

A. Half a mile.

Q. How wide is the depression in here, this towhead chute?

A. Right in here it is only thirty or forty yards wide.

Q. Is there a bank on this side of the towhead chute?

A. Yes sir.

Q. Is there sufficient space in between here for the Missis-
154 sippi River to run?

A. I should think not.

Q. Where are these big trees four feet thick?

A. They are up in here, the timber gets smaller as it comes this way.

Q. Gradually gets smaller until it gets to this point?

A. Yes sir; I should think the timber in here was probably two and a half feet thick.

Q. There is a gradual decrease from this point to this point?

A. Yes sir.

Q. In talking about the growth of cottonwood trees and the length of time they take to grow a certain amount, you do not mean that you can tell exactly as to each tree?

A. Not at all.

Q. Have you ever paid any taxes in Tennessee?

A. No sir.

Q. Have you recently paid any taxes on the Dean's Island property?

A. Yes sir.

Q. Island 37 and Centennial Island are in Tennessee, are they not?

A. Yes sir.

Recross-examination by counsel for plaintiff:

Q. Now, in pointing out the land you understood to be in Arkansas, do you not intend to include this spot?

A. Yes sir.

155 Q. You say Mr. Stockley showed you the extent of his claim?

A. Yes, sir.

Q. And did you not understand that he was claiming land in Tennessee?

A. I only know that Island 37 and Centennial Island was in Tennessee.

Q. Did he not tell you that he claimed this land as accretions?

A. I do not remember whether it was accretions or not.

Q. But you did not know he was claiming land there?

—. ——.

Witness excused.

(Cissna vs. State of Tennessee, 97-305.)

(Testimony of W. W. West Taken in Stockley vs. Cissna, Used in Cissna vs. State of Tennessee, and Introduced as Evidence in This Case by Mr. Caruthers Ewing, Counsel for State of Arkansas.)

W. W. WEST, witness for the defendant, being first duly sworn, testified as follows (see Cissna vs. Tenn., 306-309):

Direct examination by counsel for defendant:

Q. What is your name?
A. W. W. West.
Q. Where do you live, Mr. West?
A. On Dean's Island, Mississippi County, Arkansas.
Q. In what business are you?
156 A. I am a farmer.
Q. For whom do you work?
A. Mr. W. A. Cissna.
Q. Are you the manager for him?
A. Yes sir.
Q. How long have you been living on Dean's Island?
A. Six years; since 1895.
Q. How old are you?
A. Thirty years old.
Q. Where were you reared?
A. In Demopolis, Alabama.
Q. How long have you known the country up there around Dean's Island?
A. Just six years, since I went there in 1895.
Q. What is the character of the soil up at the head of the Island?
A. It has the appearance of being old land, old fields being cultivated, and sycamore trees four, five and six feet in diameter.
Q. Very large sycamore trees there?
A. Yes sir.
Q. Traveling down this way, what is the first marked characteristic of the country that you find, I am going down this way now?
157 A. Going in that way, west or southwest direction, the first thing that you strike after you leave the field is very heavy timber.
Q. What banks do you strike?
A. You strike what is said to be the bank of 1823.
Q. What kind of a bank is it, high or low?
A. In places it is 4, 5, 6, 7 and 8 feet high, it varies.
Q. After you leave the bank of 1823, how far do you go in this direction before you find another bank?
A. A half mile more or less.
Q. What is the condition of the timber on the bank of '23, what

you understood to be the bank of '23 and the first bank you find going away, the bank of '76?

A. I suppose there is timber between these two banks forty inches more or less.

Q. After you pass over the bank is there any difference in the timber?

A. A good — of timber over there is 36 inches.

Q. Do you know where the road is on the top of that Tennessee bank, do you know of the existence of that road?

A. Yes sir, there is a road along there.

Q. Is there any water down in that country?

A. There are several little ponds in the bed of old river.

Q. On which side of what you call the river of '76 does the water extend to these ponds?

158 A. Right close to the bank along the side of the Tennessee bank.

Q. Point out the right bank of the river of 1876.

A. It is right along here.

Q. What is the tow-head chute, where does it run out from down here, the head of it?

A. Tow-head chute is along about there.

Q. Where is the left bank of it?

A. Right along down there.

Q. Between the bank is it wide enough for the Mississippi River ever to run?

A. No, sir; I would not think so. It is almost 100 yards wide.

Q. Right down at the towhead chute commencing with the bed of old river, is that part lower or higher than that part between Dean's Island and 37?

A. This is towhead chute, it is lower.

Q. Are you an expert timber man?

A. No sir.

Cross-examination by counsel for plaintiff:

Q. Can you point out the bank, the Tennessee bank of the river of 1876?

A. I think I can.

Q. Please do so?

A. Right along about here.

Q. Why do you think that is the Tennessee bank?

A. Because it has heavy timber growing on it.

159 Q. Is this field on Centennial Island?

A. Yes sir.

Q. Now, do you mean to say that that was the Tennessee bank before or after the cut-off?

A. Before the cut-off.

Q. Where did you think the cut-off took place?

A. I do not know that I can point it out to you, this is the river here and this is the old river and here is the right bank.

Q. Now, point out the cut-off, if you can, on the supposition that this is the bank?

A. Let me see, this Centennial Island, I don't think I can point it out to you, I am not a map man.

Q. Well, will you point out where you think the cut-off took place.

A. I don't think I could do it at all.

Q. But you still think that this was the Tennessee bank in 1876?

A. Yes sir.

Q. Was there any great caving there?

A. I don't know whether there was any caving or not?

Q. Take right along down there between towhead chute and Mr. Stockley's field, what is the size of the timber?

A. From thirty to thirty-six inches.

Q. Now, you have testified as to the lines of 1823 and 1876. I will ask you how you know the lines of '23 and '76?

A. I do not know them, there is a bank there which I suppose is the bank of 1823.

160 Q. Why do you think so?

A. Just for this reason, there is a bank there and on top of it going back between there you can find trees just any old size you want from four feet to eight feet thick.

Q. Now is that your only reason?

A. Yes, the size of the trees and general surroundings.

Q. What are the general surroundings?

A. It has the appearance of being older land than this between '23 and '76.

Q. Why do you use the expression '23?

A. Because it was said that that was the bank of the Mississippi River at that time. Maj. Humphreys said it was called that.

Q. Did Maj. Humphreys run that line of '23 on Dean's Island.

A. He was running a line there about two weeks ago.

Q. Did he run any where around Dean's Island?

A. When he was running up there along '23 bank he was not on it, he was right close beside it.

Q. You think the '23 bank is down here?

A. Well, the line that he was running is what I called '23 bank.

Q. This bank there, is located same distance from that, is it?

A. The bank of '23, yes sir.

Q. Then you do not agree with this map that this is the bank of '23?

A. I don't know, he was right alongside of that '23 bank.

Q. Do you think the river ran there?

A. I don't know whether the river ran there or not.

161 Q. Is (if) that is the bank of '23 didn't the river run there?

A. If that was the bank, necessarily so.

Q. Do you not know whether or not the river was ever there?

A. No, sir; I don't know.

Q. All you mean to say is that Maj. Humphreys ran what you call the bank of '23?

A. Well, yes sir.

Redirect examination by counsel for defendant:

Q. I will ask you whether since this suit was brought about two weeks ago you saw Maj. Humphreys running a line on Dean's Island in the woods?

A. Yes sir.

Q. I will ask you whether he was trying to get the river of 1823?

A. That is what he said.

Q. Can you tell about where you met him?

A. Well, I don't know that I could exactly, but it strikes me it was along in here somewhere.

Q. Have you had any experience in drawing maps?

A. None at all.

Q. Were you with Mr. Bailey and Mr. Cissna the time Bailey began running his survey?

A. Yes sir.

Q. How was the northeast Huddleston corner found?

A. There was a negro in the woods hunting, he came up to us and I asked him something about this corner. I asked him if he could point it out to me, he took us over to *us* (it) and pointed it
162 out to us. He said he was with some surveyors there before.

Q. Did Mr. Cissna go with you?

A. Mr. Cissna went around with the horses and came up as we got there.

Cross-examination by counsel for plaintiff:

Q. Was Mr. Cissna present when you were talking about the corner?

A. Yes, sir; but I did the talking myself. I asked the negro if he could point out that corner to us.

Q. Did he go over and show you the stake itself?

A. Yes sir.

Q. Did Mr. Bailey begin the survey on the line or at the stake?

A. He began at the stake.

Q. What was Mr. Cissna doing? Did he say anything?

A. No sir; I do not know that he said anything.

Q. Did you show Mr. Bailey the section corner on Dean's Island up there where he began from?

A. No sir, I did not show it to him.

Q. Did you know where it was yourself?

A. I have seen it several times.

Q. Were you certain that he started from the right corner?

A. He started from the Government corner known as 27, 28, 33, and 34 T., 10 N. R. 10 east.

Q. Is that section corner marked?

A. There was a stake there.

165 Q. Do you know who drove that stake there?

A. No, sir, I do not, it was there at the time.

Q. Did any one tell you where it was?

A. Mr. Beale had been on the island before I went there; he told me about it.

Q. Does it bear any government mark on it?
A. No sir.
Q. And that is all you know about the corner, is it?
A. Yes, sir; that is all.

Witness excused.

(Cissna vs. State of Tennessee, pp. 306-309.)

(Deposition of Jas. A. Martin, Introduced as Evidence in This Case by Counsel for State of Arkansas, said Deposition Having Been Taken in Case of State of Tennessee vs. Muncie Pulp Co. et al. and Used in Evidence in Cissna vs. State of Tennessee. See Cissna vs. State of Tenn., pp. 542-556.)

The deposition of JAMES A. MARTIN, a witness, who having been first duly sworn, deposes as follows, to-wit:

By R. G. Brown, Esq., counsel for Muncie Pulp Co.:

Q. 1. Please state your name, age and residence and occupation.
A. My name is James A. Martin, I am seventy-four years old; residence Little Rock, Arkansas, and occupation, Civil Engineer.

Q. 2. Mr. Martin, I will ask you if you made a survey of
164 Dennis Island in Mississippi County, Arkansas, and a certain territory in the month of February, 1904?
A. I did.
Q. 3. Did you make a plat of the survey then made by you?
A. I did.
Q. 4. Please make the same Exhibit 1 to your deposition.
A. I do so.
Q. 5. Mr. Martin, the survey made by you there was of fractional sections 32 and 33, Township 10 north, Range 10 east, and fractional sections 4 and 5, Township 9 north, Range 10 east. I will ask you if you succeeded in locating the township lines and the section lines on these fractional sections at the time this survey was made?
A. Yes sir, I did.
Q. 6. How did you find these section lines?
A. I got a corner at the center of section 33, Township 10 north, Range 10 east, and ran south half a mile. There the ground was covered with sand from the overflows, so I couldn't find that corner and I turned and ran west for half a mile to the township line and found the common corner of Sections 32, 33, 4 and 5, and found one of the original bearing trees standing.
Q. 7. Was that common corner of 32, 33, 4 and 5 plainly marked so that you could distinctly see it?
A. Oh yes, one tree was there,—real plain, and I found the old blazes along the line also.
Q. 8. Now, I will ask you Mr. Martin, if you then ran west on the projected township line between Township 9 North and 10 north?

165 A. I did; and saw there where the original bank of the river was when the original survey was made.

Q. 9. In 1823?

A. Yes sir.

Q. 10. Was that bank plainly marked, Mr. Martin?

A. There was indications to show that the river had been there, yes sir.

Q. 11. I will ask you did you or not project that township line further to the west—the one between townships 9 and 10 north, and if so whether you found any indications of a subsequent river bank?

A. Yes sir, at one mile and eighteen chains—that is nearly a mile and a quarter, I found the bank where the river ran at the time the cut-off was made.

Q. 12. By the cut-off you mean to refer to the Centennial cut-off, do you not?

A. Yes sir.

Q. 13. Now, Mr. Martin, I will ask you what was there at that point where you say you located this bank of the river when that Centennial cut-off was made, that indicated that it was over the bank of the river?

A. There was a considerable of a depression and a great deal of difference in the growth of the timber. On the high ground and on the lower ground, showing where the old river was — much the newest timber.

Q. 14. Mr. Martin, have you marked upon this exhibit to
166 your deposition the line of the bank of the river in 1876?

A. Yes sir, it is marked at 98 chains you see.

Q. 15. This mark,—98 chains from the common corner between sections 32, 33, 4 and 5.

A. Yes sir.

Q. 16. That is a distance of how far from that common corner?

A. A mile and eighteen chains.

Q. 17. Mr. Martin, I will ask you what was the size and character of that timber on that part of the tract shown on this plat lying to the east of the line, which you have designated as the river bank of 1876?

A. Well, the timber was from eighteen inches to three feet; some of it a little more in diameter. It varies, of course, in size.

Q. 18. What was the character and size of the timber on the land immediately west of this point you have designated as the river bank of 1876?

A. From ten to eighteen inches in diameter.

Q. 19. Please state whether or not there was a striking dissimilarity in the size of the timber on top of the bank and that in the depression to the west of it?

A. Plenty; enough that anybody would have observed it who would see.

Q. 20. I will ask you, Mr. Martin, if you have had any experience as a timber estimator, and if you are acquainted with the growth of timber, the indications of the growth of timber particularly cottonwood timber?

167 A. I have had experience in that business for twenty-five or thirty years; and I have the reputation, whether I know it or not, of being one of the best in the country.

Q. 21. Did you follow that as a vocation—estimating timber?

A. Yes sir; I have for years.

Q. 22. How long have you been a Civil Engineer, Mr. Martin?

A. Since 1867. I was a United States Surveyor since 1853, and I have been accustomed to the timber business ever since.

Q. 23. Mr. Martin, I will ask you whether or not the tract that is shown on Exhibit 1 of your deposition, lying to the west of the line that you have marked to indicate the river bank in 1876, is level or whether it slopes toward the Tennessee shore?

A. Well, it is lower next to this bank, and then a little ridge also in the sand as you always find in these old river formations. You find that it is always lower next to the banks, but a bar forms and it is higher in the middle than it is at the bank. But the lowest part of that is on the Western side next to the Tennessee shore—where the real channel of the old river is.

Q. 24. What is the character of the bank on the Tennessee side of this depression, which was the old bed of the river prior to 1876, as to being a bluff or sloping bank?

A. Considerable of a bluff bank.

Q. 25. Please state if at the time you made this survey in February, 1904, if there was water between the Tennesssee bank and the bed of it occupied by that small timber ten to eighteen inches in diameter.

168 A. You will see at the north end I show a pond like down for a considerable distance, and then there was a narrow slough that had water in it; and I show that there was a river below somewhere.

Q. 26. By that you mean to say that you have marked it so it will show? That was formerly McKenzie Chute?

A. Yes sir. The old river at the south end of that land is entered by a bayou that runs through McKenzie Chute.

Q. 27. Now Mr. Martin, I will ask you if at the time you made this survey you found any fence surrounding the small timber on what was formerly the old river bed, and if you have indicated same on your map?

A. Yes sir. I found a wire fence around the part next to the Tennessee side; clear ground. I didn't find any back here to the east of that, but found a wire fence all around the west side clear up as far as I went. I don't know how much further it was.

Q. 28. At the time you made this survey, Mr. Martin, did you find where timber had been cut on what was formerly the bank in 1876, and also some cutting done on the lower ground to the west of that bank?

A. Yes sir.

Q. 29. How have you indicated that on this plat?

A. By a light dotted line that I ran around it.

Q. 30. Did you calculate, Mr. Martin, how much in acres had been cut over in the lower part?

A. I did not separate it, I don't think. I think I just calculated it altogether. It is all down here together.

Q. 31. You found, then, that there had been 385.55 acres
169 cut off altogether including what is in the bottom and what was on the bank then within the tract claimed by the State of Tennessee in this litigation?

A. Yes sir.

Q. 32. Can you make the calculations now Mr. Martin, so as to indicate how much land that is included in this 385.55 acres in the bottom and how much on top of the bank?

A. I might approximate. I judge there is about 1/3 in the low and about 2/3 up on the bank. Something near that.

Q. 33. Mr. Martin, have you had much or little experience in judging as to the date and formation of lands due to building or accretions in overflowed districts?

A. I have had a good deal of experience and been called on frequently, had quite a good deal of experience before this.

Q. 34. I will ask you Mr. Martin how much lower you would consider the formation of the land to the west line of the bank of 1876 than the land which lies to the east of that bank?

A. Well, taking the distances from the original bank and where the original survey was made, it would be a variety of distances.

Q. 35. I am asking now about the land in the tract as claimed by the State of Tennessee in this litigation,—the difference in the age of the land that lies east of the point that you have marked as the bank in 1876 and the bank that lies to the west of what you have marked as the bank of 1876?

A. Well, it would run all the way from ten to twenty-five years.

Q. 36. By that you mean to say that the land to the east
170 of the line you have marked as the river bank in 1876 is from 10 to 25 years old- than the land lying to the west of it?

A. Yes sir, in that tract of land, because that bank is gradually moving out, you know; it has been moving out gradually for years.

Q. 37. Mr. Martin, what difference did you find in the elevation of the land to the east of the bank in 1876 and the land to the west of the bank?

A. Well, from 10 to 15 feet, some places 20 feet; no, go down next to the sand bar as it is shown here, the bank is not so high, it is filled in more down there, but the farther you come up this way (indicating) the higher the bank is.

Q. 38. Mr. Martin, what did you find was the distance between the bank in 1876, on the Arkansas side and the Tennessee bank as you found it?

A. Seventy-seven chains; lacks only three chains of being a mile, the general width of the Mississippi River.

Q. 39. Now Mr. Martin, what did you find was the distance between the Tennessee bank and the bank in 1876, where you have it located at the extreme northern end of the tract of land claimed by the State of Tennessee in this case?

A. Forty-one and twenty-five hundredths (41.25) chains.

Q. 40. That is a little over half a mile, is it not?

A. Yes sir.

Q. 41. I will ask you what is the character of the bank on the Arkansas side at that point, so far as the general elevation of the land immediately to the west of it?

171 A. Well, it must be about 15 feet at least higher than that immediately west of it.

Q. 42. Is that a bluff bank or sloping bank at that particular point?

A. It is a little sloping up, but nearly perpendicular. It is quite an upright bank for bottom ground.

Q. 43. Is it clearly and plainly perceptible so that anybody can see it, Mr. Martin?

A. Yes sir, particularly just above the line. You see a little pond marked there; well it makes a right smart little bend away up in there. It is very plain. On the Tennessee side the bank is quite perpendicular; it breaks right down.

Q. 44. Mr. Martin, from your experience as civil engineer, a surveyor and a timber estimator, please state whether there could possibly be any danger of making a mistake as to where the bank in 1876 was located prior to the cut off at Centennial Island?

A. I don't think you could make any mistake at all. There is no necessity for making any mistake that I could see; the distance, the difference in the size of the timber and the difference in the elevation of the bank would indicate the bank there very plainly.

Q. 45. Mr. Martin, I will ask you to take the Exhibit No. 1 to your deposition and lay off in red ink on that map where the center of the bed of the Mississippi River was in 1876, so far as the tract of land claimed by the State of Tennessee in this suit is concerned.

A. I trace the line in pencil on the map as I haven't the facilities for tracing it in red ink, as you request.

172 Q. 46. You are at present confined in your room by illness, are you not Mr. Martin?

A. Yes sir, and have been there for over five months.

Q. 47. Mr. Martin, indicate by the letters "A" and "B" the northern and southern terminations of the line that you state was considered the middle of the river in the old bed in 1876, when the Centennial cut-off took place.

A. I did so.

Q. 48. Mr. Martin, in making this plat as shown in Exhibit 1 to your deposition, please state whether or not you made the survey of John Trigg's 100 acre tract, and also of the tract claimed by the State of Tennessee in this litigation.

A. I did not survey the John Trigg tract, I just went to the north-east corner of it. There is a large iron post standing at that corner, and all the neighbors around there agreed that was the north-east corner of the John Trigg tract, and I made my survey by that. I surveyed the east end of the John Trigg tract and I surveyed the tract claimed by the State of Tennessee in this suit.

Q. 49. I will ask you whether or not you made this survey of the tract claimed by the State of Tennessee in this suit, if you found the